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THE MARYLAND CONSTITUTION OF 1851

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Editors

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# The Maryland Constitution of 1851

BY

JAMES WARNER HARRY

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## PREFACE.

This monograph was undertaken at the suggestion of the late Professor H. B. Adams. Its purpose is to add one chapter to the constitutional history of Maryland: the period between the years of 1836 and 1851. The author is under obligations to many friends for their interest and their help; especially to Associate Professor J. M. Vincent and to Dr. Bernard C. Steiner of the Johns Hopkins University, who have assisted with many useful suggestions and corrections.

J. W. H.

Johns Hopkins University, June, 1902.

# CONTENTS

PAGE

INTRODUCTION ..... 9

CHAPTER I

CONSTITUTIONAL REFORM.

General Sketch.—State Reform Convention of 1836.—Internal Improvement and Taxation.—Object Sought by the Reformers.—Southern Counties Opposed to a Convention.—State Reform Convention of 1845.—Reform Agitation 1847-9.—State Reform Convention 1849.—The Legislature of 1849.—The Referendum..... 12

CHAPTER II

THE CONVENTION.

Sectionalism.—Personnel of the Convention.—The Convention and the Compromise Acts of 1850.—Basis of Representation.—Secession of Eastern from the Western Shore.—Committee's Report on Representation.—An Elective *versus* an Appointive Judiciary.—Political Individuality of Counties.—United States Senatorial Districts.—Free-Negro Population.—Public-School System ..... 33

CHAPTER III

THE CONSTITUTION.

Ratification of the Constitution.—Critical and Comparative Study of the Constitution..... 68

APPENDIX.

Vote by Counties on Call of the Convention.—Vote by Counties on Adoption of Constitution..... 85

# THE MARYLAND CONSTITUTION OF 1851

## INTRODUCTION

The original constitution of Maryland, framed at an early period of the Revolutionary War, remained for three-quarters of a century the fundamental law of the State, until it was superseded by the Constitution of 1851. At the time of its formation the constitution was well adapted to the wants and circumstances of the people. But the rapid growth of population, and the great commercial and industrial development of the State rendered necessary the alteration of the constitution then framed, so as to conform to social and economic progress.

Many of the more objectionable features of the constitution were amended or abolished. Among these changes were the abolition of the property qualification for the right of suffrage, and the repeal of the clause which prevented those who were conscientiously scrupulous of taking the oath from sitting in the General Assembly, or serving as a witness in criminal cases where capital punishment was involved. The electoral college for selecting the members of the Senate had been abolished, and the people had been given the right, with some restrictions, of electing their governor.

All of these changes in the constitution had been effected by successive acts of the General Assembly; but these alterations, so far from producing the desired result, had in many instances tended to destroy the harmony of the original instrument, and instead of improving had served to render it a "shapeless mass of unintelligible and contradictory provisions," so that in many of its features it bore little or no resemblance to the original constitution.

The question of a state convention to amend the constitution of Maryland had long been discussed in various parts of the State. Among those who were in favor of calling a convention to change the constitution there was considerable difference of opinion as to the proper mode of procedure. The 59th article of the constitution provided for its own amendment by the identical action of two successive legislatures, and the Declaration of Rights referring to that provision declared: "That this Declaration of Rights, or form of government to be established by this convention, or any part of either of them, ought not to be altered, changed, or abolished by the legislature of this State, but in such manner as this convention shall prescribe and direct."[1]

The question was presented whether it was within the constitutional power of the legislature of the State by a simple resolution of that body, without first repealing the 59th article of the constitution, to call a convention to alter or amend the constitution and frame a new one. This very important question gave rise to considerable discussion concerning the rights of the majority and of the minority, and of the true intent and meaning of these clauses of the old constitution.

Many leading men of the State considered that, without the previous repeal of these articles of the constitution the very call of a convention would be an open act of revolution, and its action null and void, even if sanctioned subsequently by the popular approval. They considered that the General Assembly had no authority either directly to call a convention, or to take the vote of the people in reference to its call.[2] On the other hand it was argued by the advocates of what was then called "conventional reform," that there was, underlying the whole system of state government, a principle of acknowledged right in the peo-

[1] Md. Dec. of Rights, 1776, sec. 42.
[2] Report of Majority of Committee on Constitution, 1848.

ple to change their constitution in the manner in which a majority of the people desired. They claimed that, as the authority to change, alter, or abolish their form of government was guaranteed to the people in the Declaration of Rights,[8] and that as a convention was neither prohibited by the constitution, nor the mode of its organization prescribed, the General Assembly could constitutionally provide for a convention.

The struggle between these two parties, representing roughly the agricultural and the commercial interests of the State, extended over a period of some twenty-five years. The agitation finally resulted in a call of a constitutional convention by the General Assembly, known as the "Reform Convention of 1850."

It is the purpose of the writer to trace the growth of the idea of "conventional reform" in the State. It includes the history of the Convention of 1850 and the character of the constitution which it gave to the people of the State for their ratification, or rejection.

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[8] Md. Const. of 1776, Dec. of Rights, secs. 1, 2, 4.

# CHAPTER I

## CONSTITUTIONAL REFORM AGITATION

The period of prosperity which succeeded the War of 1812 was marked by great industrial and economic changes throughout the American States. During this time the spirit of democracy diffused itself throughout the nation and produced many great and important changes in the political, social, and economic life of the people. It was a period characterized by the erection of schools, the extension of the right of suffrage, the construction of various works of internal improvement, and wild speculation. With this growth of democracy and the idea of popular sovereignty, there were many changes made in the constitutions of the several states to correspond with the social and economic conditions of the people. These changes were, for the most part, effected by constitutional conventions, elected directly by the people.

Conventions of such a character, prior to 1850, had been held in Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Virginia, South Carolina, Georgia, and Missouri. These assemblies were called for constitutional purposes by the respective state legislatures, under the general legislative power, without the special authorization of their constitutions.[1] During the year of 1850 conventions for the purpose of amending or framing new constitutions were held in the following states, New Hampshire, Vermont, Michigan, Indiana, Ohio, Virginia, and Kentucky.[2]

With such precedents, a large portion of the people of

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[1] Jameson's Constitutional Convention, p. 209.
[2] Ibid., p. 533 et seq.

Maryland demanded of their legislature the right of meeting in a convention, elected by the people, for the purpose of amending their constitution. The legislature, defending itself behind the phraseology of the fifty-ninth article of the constitution, which prescribed for its own amendment by the identical action of two successive legislatures, resisted for some twenty years every attempt of the friends of constitutional reform to secure the calling of a convention.

Maryland, since the framing of the Constitution of 1776, had become a government of the minority. Within this period of seventy-five years, the economic and social conditions of the people had undergone a complete change. The city of Baltimore, at that time scarcely more than a village, had expanded into a great commercial city, numbering a population of more than a hundred thousand, and possessing one-third of the entire wealth of the State.[3] The center of population had shifted from the Eastern Shore and the southern counties to the northern and western sections. With these changes there had been no corresponding change effected in the constitution. The smaller counties, though so unequal to the city of Baltimore and the larger counties in respect to population, still had the majority of representatives in the legislature, and foreseeing what demands would be made, if a convention was called for the purpose of changing the constitution by which their ascendency in the legislature was secured, were opposed to every project of calling such a body. In 1836, when the popular mind was agitated more, perhaps, on this question of constitutional reform than in any other period of the State's history, the legislature had instructed a select committee to inquire into the expediency of making it high treason for citizens to conspire against the constitution of the State.[4]

The question of constitutional reform by means of a con-

[3] U. S. Census, 1850.

[4] Niles Register, 5th series, vol. 52, p. 73.

vention had long been agitated among the people of Maryland, and had been largely mixed with party movements and purposes. From 1820 to the Civil War the State was a close one in regard to the numerical strength of the respective political parties. In general the Whigs were stronger. As one party secured the control of the government, the other agitated the question of "conventional reform," as it was alleged, "to ride into office."

In the movement of 1835-36 for constitutional reform, which resulted in the radical amendments of the constitution of 1836, a portion of the people of the State were prepared to effect the proposed amendments without the aid of the legislature. Local conventions were held in several counties of the State urging the necessity of constitutional reform, and for the purpose of selecting delegates to a state convention to be held in the city of Baltimore in the spring of 1836. The purpose of this convention was to bring pressure to bear on the legislature in order to obtain the desired changes in the constitution. On the 6th of June, 1836, the State Reform Convention, composed of representatives from both political parties, assembled in Baltimore City. In this convention Cecil, Harford, Baltimore, Frederick, Montgomery, and Washington counties, and Baltimore City were represented. The convention adopted a set of resolutions recommending to the voters of the State not to support any candidate for the state legislature who did not pledge himself to introduce and support a bill in the legislature providing for taking the vote of the people on the question of reforming the constitution of the State. The convention resolved: "That if within forty days after the commencement of its session the legislature shall refuse or neglect to provide for ascertaining the sense of the people of the State upon this important question, and for calling a convention as prescribed in the previous resolutions, the president of the convention is hereby requested forthwith to convene this convention for the adoption of such *ulterior* measures, as may then be

deemed expedient, just and proper, as may be best calculated, without the aid of the legislature, to ensure the accomplishment of the desired results."[5]

The legislature, coerced by the state of public feeling, and by the course pursued by the nineteen Democratic senatorial electors, who refused to qualify and meet the twenty-one Whig electors to elect the Senate,[6] made many of the desired changes in the constitution. The persistence with which the nineteen "reform" electors pursued their determination of electing a senate composed of a majority in favor of reform, and the illegal and revolutionary manner in which they endeavored to bring about a convention for the purpose of forming a new constitution, produced a reaction throughout the State in regard to the calling of a convention. Public meetings were held in many of the counties, and in the city of Baltimore, condemning the course pursued by the "reform" electors as "disorganizing and revolutionary."[7] The changes made in the constitution by the "reform legislature" of 1836-37 served to check for a few years the demand for a constitutional convention.

The legislature in the effort to secure to Maryland the growing trade of the West, and with the view of developing the mineral resources of western Maryland, was induced to make use of the capital and credit of the State in the aid of various works of internal improvement. In the December session of the legislature of 1835-36, a measure was introduced to grant heavy subsidies to the various projects of internal improvement in course of construction. This measure was opposed in the legislature, and, with a view of enabling the members to learn the sentiments of their constituencies on the subject, was postponed until the extra session held in May.

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[5] Scharf's History of Md., vol. iii, p. 189. See also Niles Register, 5th series, vol. 52, p. 124.

[6] Steiner's Electoral College, Amer. Hist. Association, Rep. 1895. p. 142.

[7] McSherry's History of Maryland, p. 351.

During this time a convention was held in the city of Baltimore at which delegates were present from the states interested. The subject of internal improvement was thoroughly discussed, and, in the language of Governor Lowe, " promises were made which created a wild delusion scarcely equalled by the dream of oriental imagination. The people were told that instantaneous wealth and power were within their grasp; that millions upon millions of public debts might safely be incurred as the returns of the investment would be certain and immediate; and that, for all time thereafter Maryland would be free from even the light burden which she had borne from the beginning; while from her exhaustless treasury, perennial streams of gold should flow bearing upon their bosom into the remotest section of the State the blessing of knowledge and refinement." [8]

The result was that when the legislature met in extra session in May, after a violent opposition, an appropriation of eight millions of dollars was made, which together with the appropriation already made, and those made two years later, involved the State in a debt of over sixteen millions of dollars.[9] To meet the interest on this debt and gradually absorb the principal, excessive taxes were imposed upon the people. Violent opposition to the taxes was manifested in several places. In some of the counties anti-tax associations were formed declaring their inability to pay the tax. In Harford county open resistance to the law was made. When the collector of the tax attempted to sell some property on which an execution was levied for the payment of the state tax a mob chased him from the place of the sale, threatening to kill any one who should venture to bid.[10] This condition of affairs, and the popular excitement caused by the financial embarrassment of the State brought

[8] Gov. Lowe's Inaugural Address, June 6, 1851.
[9] McSherry's History of Maryland, p. 368.
[10] Niles Register, 5th ser., vol. 65, p. 354.

the subject of "conventional reform" again into prominence.

As the evils of having a constitution so completely in the power of the legislature became apparent in the extravagant use of the State's credit, it was seen that there must be some effectual check to prevent the legislature in the future from involving the State in financial ruin. Each succeeding election found the subject of constitutional reform a topic of increasing excitement and agitation, and augmented the number of those who advocated the calling of a constitutional convention. The subject came regularly before the legislature, and the governors in their messages to the General Assembly repeatedly called the attention of that body to the necessity of calling a convention.

The most important alterations in the constitution contemplated were: a change in the system of representation in the House of Delegates; limitation upon the power of the General Assembly to contract debts, or pledge the public credit; reduction in governmental expenses; the right to elect all local county officers; a reform of the judicial system, and especially a constitutional convention, elected directly by the people for the express purpose of framing a new constitution.

The rapid growth of population in the northern and western sections of the State, especially in Baltimore City, rendered necessary the reapportioning of representatives in the General Assembly. The smaller counties of southern Maryland, and of the Eastern Shore, fearing the preponderance of Baltimore City's influence in the legislature, fixed an arbitrary and unjust limitation upon her representation. Although with a population including considerably over one-fourth of the entire population of the State, the representation of Baltimore City embraced only about one-sixteenth of the total representation in the House of Delegates.

Representation in Maryland from colonial days down to 1836 had been based upon territory. In the year 1659 the

legislature organized into two separate branches, and the representation in the "Lower House" was made equal among the counties. In 1692 the legislature by law fixed the representation from each county at four. This equality of representation among the counties remained unaltered until the Revolutionary War.[11]

In 1776, when the constitutional convention assembled to form a constitution for the State just emerging from colonial dependency, the system of equal representation of the counties was engrafted upon the constitution, and each county was given four delegates, and the town of Baltimore and city of Annapolis two each. In 1824 a constitutional amendment was passed by the legislature which gave Baltimore City four delegates, so as to place her representation on an equality with the counties; but it failed to be ratified by the succeeding legislature as the constitution required.[12] A similar amendment was made in 1835, but failed likewise to be ratified.[13] By the amendment of the constitution in 1836, Baltimore City, Baltimore and Frederick counties were each given five representatives. The counties of Cecil, Kent, Queen Anne's, Caroline, Talbot, St. Mary's, Charles, Calvert and Allegany three; and the remaining counties four each.

After 1840, representation in the House of Delegates from the several counties was to be established on a given ratio, having federal numbers as its basis; but Baltimore City was limited to equal representation with that of the largest county, and no county was to have less than three representatives.[14]

In the judicial department of the State a complete reorganization was urged by the reformers. The appointing of the judges by the governor, and the tenure of office for good behavior, which was found to be in practice equal to

[11] McMahon's History of Maryland, vol. 1, p. 465.
[12] Act 1824, ch. 115.
[13] Act 1835, ch. 98.
[14] Act 1836, ch. 197, sec. 9.

a life tenure, were considered to be, as the phrase went, "contrary to the spirit of American institutions." In 1842 there were in commission twenty-one common law judges and a chancellor at an expense for their salaries of $36,000 per annum. Governor Thomas in his message to the General Assembly in the same year declared that there was not a state in the whole Union, notwithstanding the fact that the population of several of the states was four times as great as that of Maryland, where the number of the law judges, and the amount of their salaries, were not less than those of Maryland. "Besides these objections," Governor Thomas continues, "another is that there are no effectual means provided for in the constitution to get rid of judges once commissioned as promptly as public interest may demand."

In 1844 the House of Delegates appointed a committee to take into consideration the advisability of reducing the expenses of the judicial system of the State, and of changing the tenure of office. In their report they showed that Maryland in 1840 paid for her judiciary the sum of $41,500[35]

[35] The State paid in 1840 in salaries the sum of $36,100, as follows:

| | |
|---|---|
| Chancellor | $ 3,400 |
| Twelve associate judges of county courts | 16,800 |
| Five chief judges " " | 11,000 |
| Chief judge of Court of Appeals | 2,500 |
| Chief judge of Baltimore City Criminal Court | 2,400 |
| | $36,100 |
| In addition to the salaries thus paid from the treasury, the two associate judges of Baltimore City Court were paid by the city ($1500 each) | 3,000 |
| The judges of the sixth district (including Baltimore and Harford counties) received in addition to their salaries, in equal shares the amount of certain taxes on proceedings in the court, amounting to ($800 each) | 2,400 |
| | $5,400 |
| Making a total of | $41,500 |

See Report of Committee on Grievances and Courts of Justice, House Journal, March 5, 1844.

(excluding the salaries of the clerks, etc., etc.), while Massachusetts, with a population more than twice as great, and almost three times the extent of territory, was paying but $25,750. The committee recommended the reduction of the number of judges; but not of their salaries.

In addition to the lack of authority claimed by the legislature, the fear of agitating the question of slavery in the State greatly increased the difficulties of securing legislative sanction for the call of a constitutional convention. That portion of the State which was deeply interested in slavery, jealously guarded that institution from both internal and external interference. It was feared that, if a convention assembled, with full power of framing a new constitution, the relation between master and slave might be changed. By an amendment of 1836, a provision was engrafted upon the constitution, declaring that the relation of master and slave in the State should not be abolished unless a bill for that purpose should pass by a unanimous vote of both branches of the General Assembly, be published three months before a new election, and be unanimously confirmed by both branches of the succeeding General Assembly after a new election. In event of slavery being abolished within the State, the constitution required full compensation to be made to the master for the value of his slaves.[16]

The dissension between the North and South arising over the settlement of the slavery question in the new territories acquired by the Mexican War, and the position of Maryland as a border State, rendered the southern counties more determined than ever to place around the institution of slavery those safeguards which should render it more secure from both internal and external violence. They considered that security could best be assured when they had a controlling voice in the government of the State. This predominant influence in the General Assembly they

[16] Act 1836, ch. 197, sec. 26.

could no longer hope to retain if a convention, whose representation was based upon popular numbers, as was urged by Baltimore City, and the larger counties, assembled to frame a new constitution.

The distribution of slave property in Maryland was very unequal. The number of slaves was rapidly decreasing in the northern and western sections of the State, especially in those counties bordering on the free State of Pennsylvania. The proximity to a free State, and the consequent facilities for escape, rendered slavery almost impracticable, and slave property almost worthless. In southern Maryland, on the other hand, where agriculture was extensively carried on, and slave labor productive, the number of slaves was constantly increasing.

The southern planters had the greater part of their capital invested in this kind of property. This interest which they guarded with so much jealousy, and which formed so large a part of their wealth, might be destroyed and the wealth of the other part of the State scarcely feel the shock. These considerations led the people of the southern counties to believe it would be dangerous to them and to their interest to give the legislative authority into the hands of the people of the north and west, especially to those of Baltimore City, who were suspected of holding anti-slavery sentiments. This group considered that they were not concerned in sustaining the rights of the slave-owners. Though there were no public manifestations of a wish for the immediate abolition of slavery in the State, the tendency of the times and the action taken by the northern abolitionists were well calculated to increase the apprehensions of the slave-owners. This fear of agitating the question of slavery in the State was one of the principal causes for the legislature's resistance of the demands of the large majority of the people for a constitutional convention.

The financial embarrassment of the State, due to the failure of realizing the large returns which had been so confidently predicted from the works of internal improve-

ment, increased the agitation for "retrenchment and reform." This agitation arose paramount to all other issues. After the Stamp Tax law of 1844 was put in execution, which was the most objectionable among the many laws passed for the purpose of raising a revenue, and which was referred to as the "British Stamp Act,"[17] the demands for a convention became general over the State.

On the 27th of August, 1845, a state reform convention, composed of delegates from several counties, was held in Baltimore City. The convention organized by the selection of Colonel Anthony Kimmel, of Frederick county, president; and George W. Wilson, secretary. A committee of five was appointed for the purpose of drafting a memorial to the legislature in behalf of the convention in favor of "conventional reform." It was decided to establish a permanent central reform committee, consisting of ten members from the city of Baltimore, and five from each county, for the purpose of "securing the great object of retrenchment and reform." The convention adopted a set of resolutions without a dissenting voice. Among which were:

"*Resolved*, That it be recommended to all the election districts in the State to organize reform associations, and to appoint corresponding committees, whose duty it shall be to report to the central committee all information that they may collect with regard to the progress of reform principles, and suggest such measures as may be deemed advisable to advance the cause in their several districts."

"*Resolved*, That it be recommended to the people throughout the State to give their votes to no candidate for either branch of the legislature who will not pledge himself to vote for the call of a convention; the abolition of all useless offices, and the retrenchment of all unnecessary expenses."

"*Resolved*, That we consider any apprehension that, in

[17] Scharf's History of Maryland, vol. iii, p. 212.

a convention assembled to form a new constitution to be submitted to the people for ratification, there is danger that the slavery question might be agitated to the prejudice of the quiet and happiness of the public, as altogether visionary; and as implying injurious and unfounded doubts of the good sense and sound principles of the people; that we believe the views of all classes of our citizens on the subject are sound, and that the State is more dishonored by the intimation of doubts with regard to it, than she could be by any agitation of the question that would be likely to take place in a convention." [18]

When the legislature assembled in December, 1845, a bill was introduced in the House which provided for taking the vote of the people of the State upon the question of calling a constitutional convention. Petitions were received from the several reform organizations of Maryland, praying for the passage of the bill. The majority of the committee to whom the petition and bill were referred, reported that under the present form of government the legislature had no power to call a convention, and that whatever amendments were necessary, could be made by the legislature in the manner prescribed by the constitution. The minority of the same committee reported that under the Declaration of Rights, and the constitution of the State, the legislature did have the power, and it was its duty to do so at the present session. After a violent debate between the members from the smaller counties on one side, and the representatives from the larger counties and from the city of Baltimore on the other, the bill was lost by a tie vote.[19]

When a new legislature was elected in 1847, the subject was again introduced in the House. The committee in their report deplored the idea of agitating a question of such moment when the State was involved in financial

[18] Niles Register, 5th ser., vol. 68, p. 405.
[19] House Journal, December session, 1845.

embarrassment of the most serious character, and requested that the whole discussion might be postponed until its agitation could exercise no injurious influence upon the credit of the State. That "conventional reform" would be a violation of the constitution, subversive of the interest of the smaller counties; and an abridgment to the rights of the minority.[20]

In the gubernatorial canvass of 1847, the Democratic party nominated Philip Francis Thomas of Talbot county for governor. Mr. Thomas's opinion on the question of a constitutional convention was so well known that he was presented as the standard bearer of the "reform party," whose motto was "reform, retrenchment, and convention."[21] The leaders of the reform movement entreated the people to lay aside all party prejudices and act independently of party affiliations in order to secure Mr. Thomas's election. They urged the counties to select their tickets for the General Assembly with direct reference to this question of "conventional reform," which had become paramount to all other questions. The Whigs, as a party opposed to the calling of a convention, nominated Mr. William Goldsborough for governor in opposition to Mr. Thomas. Active canvass of the State was made by both parties. Excitement ran high, and invectives were used to a considerable extent on both sides.

The Whigs characterized their opponents as "sycophants" and "parasites," "who pander to the prejudice and interest of the larger counties in hope of lucre."[22] The Democrats returned the abuses with equally opprobrious terms. Mr. Thomas was elected governor by a majority of 709 votes; while the Whigs had the majority in both branches of the General Assembly. The friends of "conventional reform" were again destined to disappointment. The legislature refused to pass an act authorizing

[20] Report of Majority on Constitution, Dec. session, 1847.
[21] Easton Star, July 27, 1847. [22] Easton Star, October 12, 1847.

a vote of the people to be taken upon the subject of a constitutional convention, claiming lack of authority and power to enable them to do so.

These repeated refusals of the legislature to call a convention; or to take the vote of the people in reference to its call, made the reform party more determined than ever to secure a convention with, or without, the aid of the legislature. Accordingly the leaders of the reform party throughout the State began early in the spring of 1849 a more violent agitation than ever on this all-absorbing question of "conventional reform." Local conventions were held in several counties, and delegates were selected to meet in a state reform convention to be held in the city of Baltimore. One of the first of these county conventions was held in Westminster, on the 9th of June. In this gathering addresses were made by several prominent men of the county, earnestly recommending prompt and judicious action with a view to a thorough reform in the constitution of the State by a convention. Among the defects of the constitution comprised in the resolutions adopted were: its liability to be changed at the caprice of the legislature; the inequality of representation in the Senate; the life tenure of the judiciary; the lack of constitutional check upon the legislature in the expenditures of the public money, and as a grievance, that the legislature had failed to meet the wishes of the people in granting constitutional reform.[33]

The Worcester county reform convention met at Snow Hill on the 10th of July. The complaints made against the government of the State in the convention were, excessive taxes, both direct and indirect, and no constitutional check placed upon the legislature in the expenditure of public money. The convention selected ten delegates to attend the state reform convention to be held in Baltimore city.[34] Similar conventions were held in several

[33] Westminster Democrat, June 11, 1849.
[34] Baltimore Sun, July 16, 1849.

counties. Resolutions were adopted with the view of obtaining constitutional reform, and delegates were selected for the state reform convention.

In some of the county conventions there was a division of opinion as to whether the reforms in the constitution should be made by a convention; or by the legislature of the State. Generally the southern counties and those of the Eastern Shore were opposed to the convention. They considered a convention would be dangerous to their rights and privileges guaranteed in the constitution. The Democratic candidates for the legislature in Frederick county issued a card pledging themselves not only to vote for, but to use every honorable means to secure the passage of a bill in the legislature, providing for the call of a convention. They declared that "we hold that the 59th article of the constitution is not, and was not intended to be other than a restriction upon the legislature; and that the people cannot be curtailed of their sovereignty by constitutional provisions, nor by legislative enactments."[35]

The delegates from the several county conventions, composing the state reform convention, assembled in Baltimore City, July 25, 1849. Represented were Washington, Frederick, Carroll, Baltimore, Harford, Caroline, Worcester, Somerset, Montgomery, Baltimore City and Howard District.[36] The convention was organized by selecting Col. John Pickell of Baltimore City president, and Beale H. Richardson, Esq., secretary. Two days were consumed in discussing the proposed reforms, and the methods most likely to bring the legislature to provide for a constitutional convention. On the second day the following preamble and resolutions were unanimously adopted:

"*Whereas*, The people of Maryland, through their representatives from many of the counties, districts, and city of Baltimore, have called this convention together to declare

[35] Baltimore Sun, September 8, 1849.
[36] Baltimore American, July 26, 1849.

and express for them their views and determinations in relation to the reform of their constitution, and in primary meetings have appealed to all men in Maryland, without distinction of party to rally now upon this important and vital question; and as in most, if not in all of the States of this Union, the people by a convention of delegates selected for their patriotism and wisdom, have assembled, and after calm and mature deliberation amended, remodeled, or reformed their old constitutions (however admirable and appropriate at the period of their formation), and adapted them to the changed conditions, growing power, and the irrepressible progress of more enlarged spirit of improvement and the fuller lights which practice and experience have bestowed; and as it is desirable that a work of such importance, and so allied with the feelings and interests of the people themselves, should be commenced, pursued and completed in a spirit of harmony and union, and that all minor questions, whether of Federal or State policy should be omitted, to attain for the people the great blessings of reform of their constitution, which they alone are competent to make, most beneficially to themselves, by the means of a convention, which shall be composed of delegates directly elected by, and immediately responsible to the people of this State."

"*Resolved*, That this convention, constituted as it is of delegates appointed from the counties, districts and city of Baltimore here represented, do, in behalf of the people of Maryland whom they represent, declare that it is their wish as it is their fixed determination to have a full and thorough reform of the constitution of Maryland, by a convention, so far as their votes and efforts can attain this desired object."

"*Resolved*, That the legislature possesses the power, and should call a convention at their next session, in obedience to the manifest and expressed will and wishes of the people, to reform the constitution of the State."

"*Resolved*, That in evidence of our sincerity in the prem-

ises, we the members of this convention, mutually pledge ourselves, one to the other, that we will cast our vote for no candidate for a seat in either branch of the legislature of Maryland, who is not fully committed and pledged to vote for a bill providing for an immediate call of a convention to revise the present constitution; and that we commend this course to the friends of conventional reform of all political parties throughout the State. That this convention also recommends the formation of reform committees and clubs in every county, district and city in the State, for the purpose of urging on the great work of conventional reform." [27]

These recommendations were vigorously carried out by the local reform organizations of the several counties of the State, and of the city of Baltimore, in order to secure the election of delegates favorable to "conventional reform." The Democratic party of the State was almost unanimously in favor of a convention; while the Whigs in the different sections were divided in regard to it. The Whigs of Carroll county held a convention at Westminster on the 18th of August, and took decided grounds for "conventional reform." They declared that the legislature had the power to call a convention of the people, and pledged themselves to support no candidate unless he announced himself in favor of the convention.[28] The Whig voters of Baltimore City in a convention of delegates appointed from the different wards of the city adopted similar resolutions.[29] The Whigs of the southern counties and of the Eastern Shore were opposed to a convention. The Rockville, Md., *Journal*, speaking of the convention held there for the purpose of selecting delegates to the state reform convention in Baltimore City, stated, that "No Whigs attended the meeting, and so far as we know, there is not a conventional Whig reformer in the district." [30]

[27] Baltimore American, July 27, 1849.
[28] Baltimore Sun, August 24, 1849.
[29] Baltimore American, August 31, 1849.
[30] Quoted from the Baltimore Sun, July 31, 1849.

The result of the election of 1849, gave the Whigs a majority of twelve in the House, and nine in the Senate. Governor Thomas in his message to the General Assembly, January 1, 1850, plainly told that body that the large majority of the people of the State were in favor of a convention, and unless the wishes of the people in that behalf were gratified the sanction of the legislature would not much longer be invoked.

The subject of the constitution was one of the first to be considered by the House. A select committee was appointed to inquire into the expediency of calling a convention, and to provide a bill to carry it into effect. Petitions were received from various parts of the State in favor of a convention. On the 15th of January, Mr. Biser of Frederick county, who was known in the Convention of 1850 as the "Father of reform," made a majority report favorable to a convention. The report was signed by only three of the seven members of the committee. The committee admitted that the constitution, as it then stood provided that the legislature had the power to change the constitution of the State; but denied that that power was exclusively in the hands of the legislature. They asserted that the majority of the people also had the power to amend or abolish their constitution when they so desired. The committee showed that by the report of a similar committee in 1847, there were placed upon the records of the legislature, views and arguments, which, if historically or legally correct, would leave no other remedy to the majority of the people, should they demand a convention, than a revolution.

The report claimed that the legislature had a precedent in taking the vote of the people upon the question of invoking a convention by the act of 1846, which submitted to the vote of the people of the State the proposed amendment of the constitution, requiring in the future biennial instead of annual sessions of the legislature, and which was sustained by a majority of the voters. The committee

considered that there was ample reason for asserting that the vote could be constitutionally taken upon the propriety of holding a convention, and reported a bill to that effect, with provisions to put it in execution.[31]

On the 16th of January, Mr. Causin of Anne Arundel county, from the same committee submitted a minority report, denying the constitutional authority to submit to the vote of the people a proposition relative to a call of a convention. The report was also accompanied by a bill, which provided for the repeal of the 42nd article of the Declaration of Rights,[32] and the 59th article of the constitution.[33] If the act for the repeal of these articles of the constitution should be confirmed by the succeeding legislature, then it would be lawful for the legislature to call a convention of the people, to reform or make a new constitution.[34]

To secure the sanction of the legislature for a convention, it was seen that a compromise must be made between the different sections of the State. Baltimore City and the larger counties maintained that representation in the convention should be apportioned among the counties and city of Baltimore according to population. The Eastern Shore and the smaller counties considered that all necessary changes in the constitution could be made by the legislature, and that their rights and interest would be put to hazard by a convention, having population as the basis of representation. They required, if such a convention should be called, a vote of two-thirds of the convention to pass any constitutional provision touching the interest of the people of the Eastern Shore,[35] as guaranteed to them by the constitution.

The radical reformers were unwilling to consent to the delay and uncertainty of the succeeding legislature confirming the amendments proposed by the report of the mi-

[31] Report of Majority on Constitution, January 15, 1850.
[32] See p. 10. [33] Ibid.
[34] Report of Minority on Constitution, January 26, 1850.
[35] House Journal, January 7, 1850.

nority of the committee. They demanded the immediate enactment of a law authorizing the vote of the people to be taken upon the question of a convention. After considerable opposition, the bill reported by the majority of the committee, but slightly amended, was passed by the House by a vote of forty-three to thirty-five; and the Senate without amendment or debate, except to a question of postponement, passed the bill by a vote of eleven to seven. The representatives from the following counties voted unanimously to submit the bill to popular vote: Baltimore, Harford, Cecil, Talbot, Frederick, Washington, Allegany, Carroll and Baltimore City. The counties of St. Mary's, Calvert, Charles, Dorchester, Queen Anne's, Worcester and Kent voted unanimously against the bill. The remaining counties were divided in their vote.[86] The *Baltimore Sun* of May 7, 1850, in an editorial states "That it was not until the popular sentiment turned very decidedly towards a convention independent of the legislature, that the convention was granted; and so decisively had this purpose taken hold of the popular mind that there was some disappointment when the Senate passed the bill."

The convention was to have complete power of framing a new constitution, except that it was prohibited from changing the relation of master and slave as then established and sanctioned by the constitution. The act also provided that the new constitution should be submitted to the people for their ratification or rejection on the first Wednesday in June, 1851. The representation in the convention to be the same as each county and the city of Baltimore then had in both branches of the legislature.[87]

The reform party did not rest with their success in the legislature, but endeavored to secure the adoption of the measure by the people. In Baltimore City a large meeting was held without distinction of party on the 18th of April. Addresses were made by several prominent reformers,

[86] House Journal, February 16, 1850. [87] Act 1849, ch. 346.

urging the people to cast their ballots for the convention. The banners displayed bore in large letters the motto: "A long pull, a short pull, and a pull together."[88] Similar meetings were held in several parts of the State.

The vote in regard to a convention was taken on the 8th of May. The ballots were marked thus—"for a convention," and "against a convention." A majority of 18,833 votes were cast in the State for a convention. In Baltimore City the aggregate vote cast was very small, only some 8500 voters went to the polls, and of these only 376 voted against the convention. The following counties voted against the proposition: Prince George's, Dorchester, Charles and St. Mary's. Somerset county voted for a convention by a majority of six votes.[89] The election for delegates was held on the 4th of September, and on the 4th of November, 1850, the convention assembled in Annapolis.

The fact that the articles of the constitution which gave to the legislature the power to propose and make amendments were not repealed, gives the convention a revolutionary or extra-constitutional character.

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[88] Baltimore American, April 19, 1850. [89] See Appendix, p. 85.

## CHAPTER II

### THE CONVENTION

The year 1850 was one of profound excitement throughout the United States. The slavery question was now agitating the country from one end to the other. The dispute about freedom in the new territories acquired by the Mexican War aroused sectional animosities and secession threatened. The article of the constitution and the laws of Congress providing for the recapture of fugitive slaves had been repeatedly disregarded, or set at defiance.

The government of the State of Maryland at that time was in the hands of the Whigs, who represented the agricultural and conservative element of the people. Although the Whigs were in the minority in respect to popular numbers, they were enabled, by the system of representation recognized by the constitution of the State, to have a majority in the General Assembly.

Representing the agricultural interest of the State, the Whigs, as a political party, were opposed to a constitutional convention. They were reluctant to surrender any portion of their relative influence in the state legislature to the growing population of the northern and western sections of the State, especially to the rapidly increasing population of Baltimore City. Self-protection, they considered, demanded the retention of the state government in their own hands.

It was not until revolution threatened the State that the counties of southern Maryland and of the Eastern Shore, through their representatives in the General Assembly, consented to submit to the voters of the State a proposition relative to a call of a constitutional convention.

The peculiar geographical features of Maryland are such that the State is divided into sections whose interests have always been regarded as opposed to each other. Sectional jealousy was particularly strong before the Civil War. The Eastern Shore and southern Maryland had some interests in common; both were agricultural districts, and both were deeply interested in the maintenance of the institution of slavery within the State. The number of slaves was increasing in the southern counties of both the Eastern and Western Shore. The number of slaves in three of the counties: Prince George's, Calvert and Charles, exceeded the number of whites.[1]

On the Western Shore the city of Baltimore was clamoring for greater political power. The city's representation in the General Assembly of the State was limited to equal representation with that of the largest county, though with a population more than four times as great. The rapid growth of population of Baltimore City, and her great commercial expansion; while producing a sense of pride among the inhabitants of the agricultural districts, filled them with alarm for their own political influence in the government of the State, and thereby the control over the institution of slavery. This alarm was greatly increased by the relative decrease of slave population in the northern and western sections of the State.

The commercial interest of Baltimore City was not deeply concerned in the maintenance of slavery in the State, because the employment of slaves in commercial pursuits was not considered to be profitable.

The sectional jealousy of the two Shores was greatly increased by the system of internal improvement, which was financially aided by the State. For advancing its commercial interest, the small State of Maryland had become indebted to the extent of over sixteen millions of dollars. The citizens of Baltimore City were the real promoters

[1] U. S. Census, 1850.

of the plan of state aid to canals and railroads; in this they were supported by the people of western Maryland who were interested in finding a market for their agricultural and mineral products.

The failure of the works of internal improvement to pay interest on the bonds guaranteed and issued by the State, compelled the government to resort to heavy taxation. The people of the Eastern Shore bitterly complained of being heavily taxed for the benefit of the Western Shore and Baltimore City. Intersected by rivers and creeks, the Eastern Shore did not require works of internal improvement to develop her resources. The people of the Eastern Shore regarded the Chesapeake and Ohio canal, and the Baltimore and Ohio railroad as injurious rather than beneficial to her agricultural interest. They brought into competition with her products the products of the great West.

It was amid these political and economic conflicts of interest within the State, and amid the agitation concerning slavery in the whole country, that the Maryland constitutional convention assembled in Annapolis on the 4th of November, 1850.

In the convention were many of the leading men of the State; men of wide political knowledge and experience. Among the more prominent members and those who took a leading part in the debates were ex-Governors Samuel Sprigg and William Grason. Hon. T. H. Hicks, afterward war governor of Maryland, through whose efforts Maryland was prevented from seceding from the Union, United States senators Edward Lloyd, of Talbot county, William D. Merrick, of Charles county, and David Stewart of Baltimore City. Others who were prominent in the convention were Hon. John W. Crisfield, of Somerset county, a representative in the Thirtieth and the Thirty-seventh Congress of the United States, and one of the ablest lawyers of the State. Alexander Randall, of Anne Arundel county, a representative in the Twenty-seventh

Congress, Charles J. M. Gwinn, of Baltimore City, a prominent lawyer of the State, and several others of distinguished ability. The total number of members of the convention was one hundred and three. Politically there were fifty-five Whigs and forty-eight Democrats.

The convention was temporarily organized by the calling of Col. Benjamin C. Howard, of Baltimore county, to the chair, and James L. Ridgely, of the same county, was appointed secretary.

Elements of discord abounded in the convention. Party feeling was very strong, and perhaps to this cause may be attributed in a great measure the difficulties and differences which were encountered in the progress of the session. An entire week was consumed before the convention was able permanently to organize, owing to political division and sectional jealousy.

The candidates for the presidency of the convention were Hon. John G. Chapman, of Charles county, Whig; Col. Benjamin C. Howard, Democrat; and William C. Johnson, of Frederick county, independent Whig. After eight days of various attempts to elect a president, during which time caucuses were held by both parties to instruct their members as to what compromises would be accepted and what required, Mr. Chapman, the Whig candidate was chosen permanent president. He was a conservative reformer, and had voted against the call of the convention.

On taking the chair Mr. Chapman said that venerating as he always had done, the characters of those wise and patriotic men, who in 1776 formed the first republican constitution of the State, he had witnessed with a distrust, which he never desired to conceal, the efforts that had been made to change its provisions.[2] George G. Brewer, of Annapolis, was made secretary to the convention.

Nineteen standing committees were appointed by the president to prepare and bring business before the con-

[2] Baltimore American, November 16, 1850.

vention. The most important committee was considered to be that on representation. Other committees to which great importance was attached were those on the legislative department; the committee on the judiciary, and the committee on future amendments. The president of the convention in appointing the various committees had strict regard to the different sections of the State.

Early in its session the convention had appointed a select committee to draw up resolutions in reference to the recent compromise measures adopted by the United States Congress. On the 10th of December, 1850, the select committee reported a series of resolutions, which were unanimously adopted.

These resolutions declared that the constitution of the United States had accomplished all the objects—civil and political—which its most sanguine framers and friends anticipated. That a proper appreciation of the blessings which that instrument had brought to the country would lead every state in the Union to adopt all measures necessary to give complete effect to all provisions of the constitution, or laws of Congress intended for the protection of any portion of the Union.

They declared that the several acts of Congress, namely: those relating to the admission of California as a free state; to the territorial governments of Utah and New Mexico; to the prohibition of slave trade in the District of Columbia, and to the reclamation of fugitives from labor, did not, to the extent they desired, meet the just demands of the South. But in order to heal the public agitation and perpetuate the Union, the acts of compromise received their acquiescence. They declared that of the series of laws passed by Congress that intended to insure the restoration of fugitives from labor was the only one professing to protect the peculiar rights and institution of the Southern states from the "mischievous hostility of a wicked fanaticism" in the North. The fugitive slave law was but a "tardy and meagre measure of compliance with

the clear, explicit and imperative injunction of the constitution." The provisions of that law could not be violated or deliberately evaded without leading to a dissolution of the Union."[3]

Copies of the above resolutions were sent to the executives of several states. Governor Collier of Alabama in acknowledging the receipt of the resolutions said that Maryland had spoken frankly and patriotically, and that the South would be true to the Union so long as the "sacred charter of our rights was respected and honored, and the general government manifested a willingness and ability to enforce the law made for the protection of the South."[4]

Similar resolutions were adopted by the citizens of Frederick county. These resolutions declared emphatically that the fate of the Union depended upon the future conduct of the North.[5] The convention expressed also its great admiration for the eminent statesmen "who, rising above the influence of party and sectional considerations, periled their well-earned reputations for the enduring welfare of their country."

On the 25th of March, 1851, the convention entertained at dinner the Hon. Daniel Webster. Mr. Webster took a leading part in defense of the compromise measures in the United States Senate,[6] and was honored by the people of Maryland as "the ablest defender of the Union." Amid speech-making and toast drinking the attachment and loyalty of Maryland to the Union was proclaimed.[7]

The subject of apportioning representation in the General Assembly among the several counties and Baltimore

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[3] See Resolutions, Baltimore American, December 12, 1850.
[4] Debates of Convention, vol. i, p. 384.
[5] See Baltimore American, November 18, 1850.
[6] See Webster's Speech, 7th March, 1850; Webster's Works, vol. 5, p. 324.
[7] See Pamphlet, "Dinner given to Hon. Daniel Webster by the Md. Reform Convention, 1850."

City was one of the first to be considered by the convention, and one of the last to be disposed of. To many this took precedence over all issues before the convention. It was the most difficult and embarrassing question upon which that assembly was called to act. The issue was between the smaller counties of southern Maryland and of the Eastern Shore on the one hand, and Baltimore City and the larger counties which claimed representation according to population on the other. The smaller counties were generally willing to give representation according to population to the counties, but desired to restrict the representation of Baltimore City to equal representation with that of the largest county, or giving the city the same representation as was agreed to in 1836. The city of Baltimore and the counties which were prominent in wealth and population protested against the injustice of the smaller counties controlling the state legislature. The smaller counties having a majority in the legislature under the old constitution insisted that they would never surrender the rights and privileges which that constitution conferred upon them. Under the constitution of 1776 the people of the Eastern Shore enjoyed certain privileges, among which was that no constitutional amendment could be made touching the interest of the Eastern Shore without a two-thirds vote of all the members of two successive General Assemblies, requiring only a majority vote for the rest of the State.[8]

This provision was the result of a compromise between the Eastern and Western Shores at the time of the formation of the original constitution. The smaller counties of the Eastern Shore and southern Maryland having the majority in the legislature practically held control over the institution of slavery and the public treasury. This power they were determined not to yield to the larger counties and especially to the people of Baltimore City.

[8] Constitution 1776, art. 59.

Under these circumstances it was seen that a compromise was necessary between the contending parties and their interests to secure a new constitution. The act itself, by which the convention was called, was a virtual acknowledgment that the constitution to be framed should be a work of compromise on the subject of representation, since it fixed the representation in the convention. Each county and Baltimore City was given the same number of representatives as they then had in both branches of the General Assembly.

The majority of the members were hampered in making compromises by the instructions given by their constituencies. These instructions were generally of such a character as to give to certain parts of the State some superior advantage, or prevent a reduction of their relative influence in the future legislatures.

Closely connected with the subject of representation was that of slavery, the only subject upon which the convention was unanimously agreed. Mr. Presstman, of Baltimore City, had anticipated the representatives of the counties more particularly interested in slavery, and submitted a proposition providing that the legislature should have no power to abolish the relation between master and slave as it then existed in the State,[9] and that the committee on the legislative department be instructed to report a bill to that effect.[10] This was regarded as a decided advance in the way of conciliation on the subject of representation, since it came from the part of the State where no great interest in slavery was felt; and a reciprocal concession was expected in return from the southern counties in regard to representation.

The southern counties were considering not only the immediate protection of slavery within the State, but the future, when the institution of slavery would be practically confined to southern Maryland. At the present rate of

[9] See chap. i, p. 20.

[10] Debates, vol. i, p. 113.

decrease they considered that it would be only a few years until slavery would have entirely disappeared from the northern and western counties. They refused to compromise in any manner that would lessen their influence in the General Assembly.

The committee on representation consisted of nine members, representing Charles, Baltimore, Kent, Carroll, Talbot, Somerset, Washington, Anne Arundel counties and Baltimore City. The committee was unable to agree upon any plan of apportionment.

On the 11th of December, Mr. Merrick, of Charles county, chairman of the committee on representation made a negative report as follows:

(1) "*Resolved*, That it is expedient to regard federal numbers in finding the estimates and basis of representation in the House of Delegates."

(2) "*Resolved*, That it is inexpedient to adopt a principle of representation based exclusively upon popular numbers in organizing the House of Delegates or the Senate."[11]

Several of the members of the convention desired the whole subject of representation to be postponed until the convention had made further progress in making the constitution. They considered the question of representation was one to which more importance was attached than to any other upon which the convention would be called to act.

The delegates from Baltimore City consisting of Messrs. Presstman, Gwinn, Brent, Stewart, Sherwood, and Ware were opposed to referring the subject again to the committee in any form, and desired the whole subject of representation to be discussed in the convention as a whole, without the intervention of the committee. After several attempts to recommit, the whole subject was laid upon the table.[12]

[11] Debates, vol. i, p. 106. The term "federal numbers" meant the congressional ratio of 1 free to 3/5 slave population.

[12] Debates, vol. i, p. 137.

The first part of the report that federal numbers should be used in finding the basis of representation was not approved by the majority of the convention. Federal numbers had been recognized in Maryland for the first time, in an amendment of the constitution in 1836. It was the result of a compromise based upon federal numbers and territory. According to this one senator was elected from each county and Baltimore City, while representatives followed the federal ratio of population.

If federal numbers had been taken as a basis for representation, it would have deprived southern Maryland of a large part of her population in representation. In Baltimore City there were less than three thousand slaves, while her free-negro class numbered nearly twenty-five thousand.

As free negroes were to be counted as whites, though having no political rights, federal numbers would have reduced the southern counties' representation unduly. In Prince George's and Charles counties the slave population exceeded the number of whites and free negroes combined. In addition Baltimore City had a large alien population, which, on the basis of federal numbers, would be made equal to citizens in the counties, where the population almost exclusively consisted either of native-born, or of naturalized citizens.

Federal numbers in apportioning representation in the Congress of the United States was the result of a compromise between the slave and the non-slave states. It provided that taxation and representation should be apportioned equally. The slave-holding states received as a compensation for the non-enumeration of a portion of their slaves in the apportionment of representation, an exemption to the same extent from taxation.

In Maryland there was no such compensation or equivalent exemption proposed, or contemplated. The effect of adopting federal numbers as a basis for representation would have been to throw the loss occasioned by slavery,

on the particular portion of the State in which slaves were most numerous.

In regard to the second part of the report that population alone could not be taken as the basis of representation in the House of Delegates there was a division in the convention. There was both a sectional and a political interest against recognizing population as the basis of representation; sectional, because it would have thrown the smaller counties in the minority in future legislatures, and political, because it would have given the State to the Democrats. This latter event the Whigs, who were in the majority, were determined to prevent.

There were two views held in the convention in regard to representation between which a compromise had to be made. The first was in favor of a system of representation on a population basis for the whole State. The second favored representation on the basis of population for the counties; but restricted Baltimore City to a representation equal to that of the largest county.

In some of the southern counties during the contest for seats in the convention, the question of secession was discussed.[13] It was decided in event of population being taken as the basis of representation in the General Assembly of the State, that there should be engrafted on the new constitution a provision, which would enable the Eastern Shore and southern Maryland to secede peaceably from the State, and unite with Delaware or Virginia. The time of secession was to take place whenever the interest of these sections seemed to require it.

For this purpose Mr. T. H. Hicks, afterwards governor of Maryland, offered an amendment to the Declaration of Rights providing, "That any portion of the people of this State have the right to secede, and unite themselves and the territory occupied by them to such adjoining State as they shall elect."[14] One of the members of the conven-

[13] Debates, vol. i, p. 156.

[14] Debates, vol. i, p. 150.

tion humorously offered an amendment to the above by adding, "provided we can get any State to accept us."

This attempt of the Eastern Shore to secede from the Western Shore was not a new feature in the history of Maryland. The prevalence of shore jealousy was very strong in the convention which framed the constitution of 1776. A proposition was then made in that convention to insert an article in the Declaration of Rights, acknowledging the right of either shore to separate from the other whenever their interest and happiness so required. This proposition in the convention of 1776 received the support of sixteen out of the twenty-one members from the Eastern Shore.[15]

The amendment offered by Mr. Hicks was lost by a vote of fifty-one to twenty-seven.[16] It received the support of fifteen out of the twenty-seven votes cast from the Eastern Shore. The counties of Dorchester and Worcester voted unanimously for secession. Queen Anne's county cast a solid vote against it, and the other counties of the Eastern Shore were divided in their vote.[17] Mr. Hicks made a second unsuccessful attempt to have his amendment adopted when the convention was considering future amendments.[18]

It was the deep interest in the maintenance of slavery in the southern counties of both shores that caused those sections of the State to view with alarm the demands of Baltimore City and western Maryland for representation based on population.

A provision was placed in the constitution intended to remove the apprehensions of the southern counties in regard to the protection of slave property, by prohibiting

[15] McMahon's History of Md., p. 466.

[16] Debates, vol. i, p. 156.

[17] Mr. Hicks, a number of years later, declared that he had introduced the resolutions, not to declare an "inherent right," but to give the people an opportunity to vote on the question. [See Radcliffe: Governor Hicks of Maryland and the Civil War, p. 13, note.]

[18] Debates, vol. ii, p. 851.

the legislature from altering the relation of master and slave as then existed in the State. The representatives from the southern counties had no faith in a constitution, especially since the old constitution had been abolished by a *revolutionary* act.[19] They did not consider themselves secure unless they had the controlling influence in the government of the State in their own hands.

When the final vote was taken on the popular basis of representation for the whole State, only seventeen votes were cast in its favor, and sixty against it.[20] Baltimore City and Frederick county cast a solid vote for the popular basis; Baltimore and Carroll counties three each, and Harford county one. The remaining counties cast a solid vote against the proposal.

The committee after a long deliberation and comparison of views, found it impossible to concur by a majority in any plan of representation. On the 15th of February, Mr. Merrick, with the permission of the committee, submitted a plan for consideration. The report was not one in which the committee concurred. It was for the purpose of bringing the subject before the convention that the committee authorized the report to be made.

The plan submitted by Mr. Merrick gave Baltimore City two more delegates than the largest county in the House of Delegates; the members to be chosen annually. The Senate was to be composed of twenty-two senators elected for a term of four years. One senator from each county, and two from Baltimore City; but the city was to be divided into two senatorial districts and nine electoral districts, for the purpose of electing members to the House of Delegates. Each district was to elect one member.[21] The proposition to district Baltimore City, as has been done since, was advocated by the Whig voters of the city, who were in the minority.[22]

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[19] See ch. i, p. 32.
[20] Debates, vol. i, p. 122.
[21] Debates, vol. i, p. 285.
[22] Baltimore American, November 20, 1850.

There were two minority reports made from the committee on representation; one by Mr. Lloyd, of Talbot county (a Democratic district), giving to Baltimore City five more delegates than the largest county and equal representation in the Senate.[33] The second minority report submitted by Mr. Chambers, of Kent county, was the same plan adopted in 1836 in all respects, except that it adopted the aggregate population as a basis instead of federal numbers.[34] All of these plans for a basis of representation were rejected by the convention.

There were several compromises offered, but none upon which the convention could agree. Baltimore City was willing to compromise on a territorial basis in the Senate; but claimed popular representation in the House of Delegates. They considered this would be a sufficient check to prevent any legislation detrimental to the counties.

The plan of representation, which received the greatest attention and support was known as the "Washington county compromise." It was introduced by Mr. Fiery of that county. The plan was based on federal numbers. If adopted, it would have given Baltimore City four more delegates than the largest county.[35] This compromise was rejected, afterwards reconsidered, and finally lost by a vote of forty-seven to forty-six.[36]

The question of apportioning representation was finally disposed of April 1. The plan was introduced by ex-Governor Grason, of Queen Anne's county,[37] subsequently amended so as to give Baltimore City one additional representative, and finally adopted by a vote of forty-three to forty.[38] Representation in the House of Delegates was apportioned among the counties on a population basis; Baltimore City was limited in the House to four more delegates than the most populous county. No county was to have

[33] Debates, vol. i, p. 286.
[34] Debates, vol. i, p. 287.
[35] Debates, vol. ii, p. 19.
[36] Debates, vol. ii, p. 170.
[37] Debates, vol. ii, p. 197.
[38] Debates, vol. ii, p. 199.

less than two members, and the whole number of delegates never to exceed eighty.

In the Senate the method of federal representation was adopted; one senator from each county and the city of Baltimore elected by the people. This increased the representation of Baltimore City in the General Assembly from one-sixteenth to one-eighth of the total representation of the State.[29]

Among the reforms brought forward, that of the judicial system of the State held a prominent place. The judiciary had been but slightly changed since the framing of the original constitution. In 1776 a court of appeals was established, whose judgment was final in all cases of appeal from the county courts, and courts of chancery. Originally there was also a court of admiralty, which court was abolished at the time of the adoption of the United States Constitution in 1789. In 1804 the State was divided into six judicial districts. For each district three judges were appointed by the governor with the approval of the Senate.

Reform in the judiciary had been one of the prominent features of the earlier agitation of 1836; but no change was made at that time. The tenure during good behavior, and the appointing of the judges by the governor, together with the extraordinary expense attendant upon the administration of justice were the principal grounds of complaint. The annual cost incurred by the State for the maintenance of the judicial system in salaries alone exceeded by several thousand dollars that of many other states of the Union, far more populous and of much greater territorial extent.[30]

A reduction in the number of judges and a limitation on the income of county clerks, registers of wills, and other officers it was thought, would afford relief to the taxpayers of the State, and contribute toward payment of the

[29] See ch. iii, p. 75.

[30] See ch. i, p. 19.

public debt. It was also claimed that the appointive power was abused and that the governor and Senate were influenced more by political considerations than by public interest.

The majority of the committee on the judicial department, Mr. Bowie, of Prince George's county, chairman, submitted a report providing for an elective judiciary. The term of office was to be ten years, and the judges reeligible. The State was to be divided into three judicial districts; one on the Eastern and two on the Western Shore. The report also provided for the election by popular vote of all clerks, registers of will, justices of the peace, etc.[31] All of these officers heretofore were appointed by the governor.

Mr. Bowie, in presenting the report of the majority said that in his judgment, the reform in the judicial system of the State was the most important question that could be submitted to the convention. He claimed that southern Maryland and the Eastern Shore would have never consented to the calling of that convention, save for the reform desired in the judiciary, and for the reduction in governmental expenses.[32]

On the 18th of March, Mr. Crisfield, of Somerset county, one of the most distinguished lawyers of the State, from the minority of the same committee, submitted a report, providing for an appointive judiciary; with a tenure for good behavior. The State was to be divided into eight judicial districts. The estimate of the probable cost was placed at sixty-three thousand dollars per annum. Twenty-nine thousand dollars more than the estimate of the majority's report.[33]

The contest in the judicial organization was over an elective and an appointive judiciary. Public sentiment in the State was strongly in favor of the former, though some

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[31] Debates, vol. i, p. 239.
[32] Debates, vol. ii, p. 460.
[33] Debates, vol. i, p. 516-519.

of the counties, as Harford, had instructed their delegation to vote for the appointive system.[84]

The general public desired to see a system which, while it gave to the judges a term sufficient to guarantee their independence would at the same time permit their work to be reviewed by the people, or as one member of the convention expressed it, "an independent judge dependent upon the people." It cannot be said that the change to the elective system satisfied the court, or the bar. It was incidental to the transformation going on in the other departments. Democracy rejected the appointive system. Every official must be chosen by popular vote.

The old appointive system found its ablest defender in Judge Chambers, of Kent county. He made a strong appeal for the independence of the judiciary as a department of the government, and as necessary to that independence, the tenure during good behavior. Judge Chambers attempted to show that there was as much reason for making the judges independent of the people in the United States as there was in England for making the judges independent of the crown. In his autobiography Mr. Chambers said that he claimed the merit of being the most ardent opponent of the "novel and unwise" system of constituting the judiciary by a popular election of judges.[85]

The convention rejected the appointive system by a vote of forty-nine to twenty-three,[86] also by a vote of more than three to one the convention rejected an amendment offered by Mr. Phelps, of Dorchester county, for the election of the judges by joint ballot of the two Houses of the General Assembly.[87]

The bill as originally reported by the majority, but slightly amended, was adopted. The State was divided into four judicial districts instead of three as the original

[84] Baltimore Sun, August 4, 1850.

[85] See autobiography in Scharf's Biographical Cyclopedia of Representative Men in Md. and D. C.

[86] Debates, vol. ii, p. 492. [87] Debates, vol. ii, p. 487.

report provided. Baltimore City embraced one district, and the counties of the Eastern Shore a second.

The convention found great difficulty in determining whether the future sessions of the General Assembly should be held annually or biennially. Prior to 1846 the legislature had held annual sessions. In that year the General Assembly referred the question of biennial sessions to the voters of the State. The referendum was held on the general election day in 1846. Each voter was asked by the judges of the election whether he was in favor of biennial or annual sessions. Biennial sessions were declared for by a majority of some five thousand voters.

The biennial bill had been passed as an anti-reform measure. Its object was to reduce the governmental expenses and to remove the agitation for a constitutional convention. The bill received its greatest support on the Eastern Shore. The Western Shore gave a majority of some twelve hundred against the change.[38]

The committee on the legislative department favored biennial sessions. When the report was read, an amendment was offered providing for annual sessions. Political considerations had great influence in the desire to return to the annual sessions. The change in the basis of representation would give the Democratic party the majority in future legislatures. "Democracy demanded that elections be free and frequent."

Mr. Dirickson, of Worcester county, referring to the vote of the people on the biennial bill in 1846, said, "It was wonderful that those who professed to drink from the very fount of Democracy—who worshiped at no other shrine, and bowed to no other political god—should have so soon not only scoffed at the mandates, but absolutely by their speeches rebuked the very wisdom of the people."[39]

The argument in favor of annual sessions was made on the ground that a greater amount of labor than usual

[38] Debates, vol. i, p. 277.

[39] Debates, vol. i, p. 272.

would be imposed upon the General Assembly, by reason of the necessity of enacting laws to carry out the provisions of the new constitution. They claimed that biennial sessions were anti-democratic in their tendency; and were an indirect and open violation of the spirit of the clause in the Declaration of Rights which declared that elections ought to be free and *frequent*. As a proof that annual sessions were necessary they referred to the states of New York, Massachusetts, Pennsylvania, and other states, which had annual sessions. They claimed that the relation which cities bear to the rest of the State, because of the great concentration of population and capital in the cities, rendered annual sessions of the legislature absolutely necessary for the preservation of the equilibrium between the diversified interests. The convention finally agreed to annual sessions for three years; thereafter the sessions of the legislature were to be biennial.

The committee on the Declaration of Rights, Mr. Dorsey, of Anne Arundel county, chairman, submitted their report on the 11th of January, which was taken up by the convention for discussion on the 28th.[40] As reported by the committee the preamble to the Declaration of Rights read as follows: "We, the Delegates of Maryland, in convention assembled, taking into our most serious consideration the best means of establishing a good constitution in this State, declare," etc. The words of the preamble were substantially the same as those adopted in 1776.

Mr. Dashiell, of Somerset county, moved to amend the preamble by inserting after the word "Maryland" the words "representing the counties, and city of Baltimore."[41] The object of the amendment was to assert the theory that the counties and the city of Baltimore were parties to the compact in their municipal capacities.

This theory of political individuality of the counties had

[40] Debates, vol. i, p. 140.

[41] Debates, vol. i, p. 235.

been urged many times in the legislature, during the reform agitation, and was referred to in the convention. Mr. Dashiell's view of the government of Maryland was that of a confederation of counties: each county being a separate and distinct community. He did not regard the counties as sovereignties, because the State herself had scarcely a principle of sovereignty left after the formation of the Federal Government.

The basis of this view of the political individuality of the counties was an historical one. In the convention of 1776, which framed the original constitution of the State, the counties were represented equally. In that convention the voting was by counties; and not by individuals, except in certain cases, and on the final adoption of the constitution.[47] In the convention of 1776 Baltimore town, and Annapolis city were recognized as boroughs; and a representation of only one-half of that allowed to a county was conceded to them. The resolution in determining the representation of Baltimore town and Annapolis says, "Nor shall the resolution be understood to engage or secure such representation to Annapolis or Baltimore town, but temporarily; the same being, in the opinion of this convention, properly to be modified, or taken away, on a material alteration of circumstances of those places, from either a depopulation or a considerable decrease of the inhabitants thereof."[48]

From these facts Mr. Dashiell argued that the right was reserved to take away the representation of Annapolis and Baltimore, under certain circumstances; but no such right was given, reserved, or acknowledged to have the like effect upon the counties under any circumstances whatever. The right to political existence and equal representation was reserved to each county, and whenever this equal representation was to be changed, modified or abol-

[47] See Proceedings of Convention, June 25, 1774.
[48] Proceedings of Convention, July 3, 1776.

ished, it must be done by the free consent, or acquiescence of the counties, that it was under this agreement of equal representation that the counties entered into the compact of government in 1776."

The style of the preamble as finally adopted was introduced by Mr. Randall, of Anne Arundel county." The important change made substituted "people" for "delegates." The whole clause reading: "We the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good constitution in this State, for the sure foundation, and more permanent security, thereof, declare," etc. This preamble was copied verbatim in the constitution of 1867.

The first article of the Declaration of Rights, as reported by the committee read as follows: "That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole." Mr. Presstman, of Baltimore City, moved an amendment to the above article by adding, "and they have at all times the inalienable right to alter, reform, or abolish their form of government in such manner as they may think expedient." " The object of the amendment was to vindicate the revolutionary character of the convention, and to insert in the constitution the right of revolution.

This doctrine that the majority of the voters of the State had the right to alter or change the constitution whenever and in whatever manner the majority deemed best, irrespective of legal authority, or constitutional means received a large support during the reform agitation. Although Mr. Gwinn, of Baltimore City, said in support of the amendment that its object was not to assert the right of revolution, but to compel the recognition by the

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" See Mr. Dashiell's speech, Debates, vol. i, pp. 437-441.
" Debates, vol. ii, p. 785. " Debates, vol. i, p. 143.

existing government of the source of power in the State.

The amendment of Mr. Presstman was taken from the Declaration of Rights of the State of Texas, and appears in the constitution or Declaration of Rights of several of the states.[a]

It was at this time that Mr. Hicks moved his amendment to the Declaration of Rights, which provided for the right of any portion of the State to secede from the other.[b] The amendment of Mr. Presstman was amended so as to give the majority of the voters the right of changing the constitution, but in a legal manner, and was adopted.[c]

The 9th section of the report of the committee on the legislative department declared that, "No priest, clergyman, or teacher of any religious persuasions, society or sect, and no person holding any civil office of profit under this State, except justices of the peace, should be capable of having a seat in the General Assembly."

The Rev. Mr. Chandler, of Baltimore county, the only clergyman in the convention, made a vigorous attempt to abolish the first section of the clause, which he regarded as entirely unnecessary and unjust. In defence of his motion to "strike out" Mr. Chandler said that, "Equal rights and privileges to all" was a principle advocated by the members of the convention, yet the same gentlemen calmly unite their strength to blot from political existence a numerous and influential class of citizens as wholly unworthy of all confidence and even dangerous to the community. "What great offence" he asked, "what crime have this class of citizens committed, that they should be deprived of one of the dearest privileges of American-born citizens—that of eligibility to office? Have they committed treason? Have they been guilty of highway robbery? Are they

[a] Maine, Dec. of Rights, 2d sec., 1820; Massachusetts, Preamble to Constitution, 1780; Vermont, Dec. of Rights, art. vii, 1793; Connecticut, Constitution, art. i, 1818; Virginia, Dec. of Rights, 2d sec., 1820; Indiana, Constitution, art i, 2d sec., 1816.

[b] See ch. ii, p. 43. [c] Debates, vol. i, p. 186.

murderers? None of these crimes have been alleged against them; yet in the opinion of the committee they were guilty of a crime, which should forever disfranchise them as citizens of the State."[80] Twenty-one states out of the thirty-one in the Union at that time had no proscription measure against the clergy. Mr. Chandler's motion to strike out the section was defeated by a vote of two to one.[81]

The report of the committee on the executive department was submitted by ex-Governor Grason, chairman, on the 7th of March. The report provided for the election of the governor by popular vote, for a term of three years. The State was to be divided into three gubernatorial districts. The counties on the Eastern Shore composed one district; and the Western Shore the other two. From each district the governor was to be chosen in rotation. Mr. Dorsey, of Anne Arundel county, moved to amend the report by the election of the governor by an electoral college. This amendment was rejected by a vote of sixty to nine.[82] Several unsuccessful attempts were made to have the State divided into four gubernatorial districts. The report was amended by making the term of office four years instead of three; and to be eligible to the office the candidate was required to have been a citizen of the United States for five years instead of ten, and a resident of Maryland for five years instead of seven.

The system of districting the State for the election of the governor, was also attempted for the selection of United States senators. In 1809 the legislature passed a law dividing the State into United States senatorial districts of the Eastern and Western Shores.[83] A discussion arose in the convention as to its legality. The law of 1809 had always been observed by the General Assembly in selecting United States senators. The question had never come before the

[80] Debates, vol. i, p. 389.
[81] Debates, vol. i, p. 394.
[82] Debates, vol. i, p. 455.
[83] Act 1809, ch. 22.

Senate of the United States for determination as to the constitutionality of the law. Several members of the convention held the opinion that the State of Maryland had entire control over the whole subject of the election of United States senators, except so far as limited by the Federal Constitution, which provides that the election of United States senators shall be by the state legislatures.[54]

Other members of the convention contended that districting the State into senatorial districts would be a violation of the Federal Constitution by adding other qualifications for United States senators than that provided for by the Constitution of the United States. They argued that if the legislature could restrict the selection of United States senators to a district, it could equally restrict the selection to a certain county, or city, and as a logical deduction the legislature had the authority to restrict the selection of senators to a certain party, or class.

Mr. Bowie, of Prince George's county, moved an amendment to the 24th section of the legislative report, making it obligatory upon the General Assembly to lay off six United States senatorial districts. Mr. Bowie said that it was of great importance to the agricultural portions of the State that they should be represented in the Senate of the United States, and should not always be overruled by the commercial interest. In the Senate of the United States, above all places, could agriculture be fostered and protected.[55]

Another able defender of the proposition for districting the State for United States senators was found in Mr. T. H. Hicks: "a feeble representative of the Eastern Shore" as he called himself. Mr. Hicks said he did not profess to be versed in the law; but he did profess to have some common sense, and to understand to some extent the rights of the people of Maryland. "Were the people of the Eastern Shore," he asked, "to be retained as men

[54] U. S. Constitution, art. i, sec. 3. [55] Debates, vol. ii, p. 259.

serfs, hewers of wood and drawers of water for the city of Baltimore?" If they could be allowed to secede from the Western Shore they would gladly do it. But no, they had built canals and railroads for the city of Baltimore, and their services were still required. Ten votes in the legislature had been voted to Baltimore City, and she seemed now to be hardly as well—certainly not more satisfied—with ten than she had been with five. In a short time Baltimore City would require a still greater representation. At each new change the agricultural and slave interests were less protected. He believed it to be right and essential for the protection of the interest of the Eastern Shore, that the Eastern Shore should have a representative in the Senate of the United States.[86]

Mr. Bowie subsequently substituted two senatorial districts for six as his original amendment provided. The Eastern Shore comprised the first district, and the Western Shore the second.[87] The convention, after a protracted debate, refused to place in the constitution a provision for districting the State for the election of United States senators.

The convention had considerable difficulty in determining the manner in which future amendments to the constitution should take place. The report of Mr. Sollers, of Calvert county, chairman of the committee on future amendments and revision, gave the amending power to the General Assembly. The report also provided for a constitutional convention. The convention was to be called by the General Assembly, subject to the ratification by the succeeding legislature, after a new election. The report of Mr. Sollers did not receive the assent of the majority of the committee.[88]

On the next day (April 4) Mr. Fitzpatrick, of Allegany county, from the same committee submitted a report in

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[86] Debates, vol. ii, p. 282-283.
[87] Debates, vol. ii, p. 270.
[88] Debates, vol. ii, p. 223.

which four of the members of the committee concurred. The report provided that the General Assembly should submit to the voters of the State a proposition relative to the call of a convention every ten years. If the majority of the voters so determined the convention was to meet at its earliest convenience.[88] Mr. Brent, of Baltimore City, offered a substitute for the above report, by making it obligatory on the governor of the State to issue a proclamation every ten years for the taking of the vote of the people in reference to a convention.[89] The difference between Mr. Brent's proposition and the majority of the committee's report was that the former guaranteed independence of the legislature, while the other left to the legislature the right of authorizing the vote to be taken on the question of a convention.

Mr. Sollers said that he did not know how rapid were the strides of Baltimore City in the cause of abolition; but he knew the insecurity of slave property in southern Maryland. Slave property was insecure just in proportion as the counties surrendered their control over the government of the State. He was not willing to trust the maintenance of slavery under a constitutional provision which would enable the majority of the voters to call a convention.[91]

Mr. Jenifer, of Charles county, in a speech before the convention on the 29th of January, 1851, referring to the article in the constitution prohibiting the legislature from passing any law affecting the relation of master and slave as then existing in the State, said: That article was intended to put to rest the fanaticism as regards slavery in Maryland, and would do so, so long as the constitution and laws were respected. But if the right of a bare majority was recognized to abolish the existing system of government, and establish a new one, that provision was no guar-

[88] Ibid., p. 245.
[89] Debates, vol. ii, p. 360.
[91] Debates, vol. ii, p. 364.

antee to the southern counties that the constitution would be respected. If the people of Baltimore City, together with those of Baltimore and Frederick counties, who had less interest in slavery than any other portion of the State, should deem it expedient to abolish slavery there would be no means to prevent them. If the right of the majority to abolish the constitution was recognized, the right of secession must go "*pari passu*" with it. It would become the duty of the Eastern Shore and of the lower counties of the Western Shore to adopt any measures to protect themselves, their liberties, and their property from revolution and anarchy."[a]

The report of the majority, but slightly amended, was adopted. The legislature was authorized to pass a law for ascertaining the wishes of the people in regard to calling of a convention, immediately after the publication of each census of the United States.

What to do with the free-negro population of Maryland had been a problem much discussed for several years. On January 12, 1842, a Slave-Holders' Convention was held in Annapolis. The purpose of this convention was to take such measures as would influence the legislature to pass more stringent laws for the protection of slavery. The convention proposed laws to prevent all manumissions of slaves; except on condition of immediate transportation at the expense of the manumittor, to some place out of the State, and to prevent free negroes from coming into Maryland. Large rewards were recommended for the conviction of persons enticing slaves to run away.[b] In compliance with the recommendations of the convention, the legislature passed more stringent laws in reference to the free negroes.[c]

On the 4th of December, the convention of 1850 ap-

[a] Debates, vol. i, p. 153.
[b] Niles Register, 5th ser., vol. 61, p. 322.
[c] Scharf's History of Md., vol. iii, p. 325.

pointed a committee to whom was referred the subject of the status of the free colored population. The committee was required to submit to the convention "some prospective plan, looking to the riddance of this State, of the free negro, and mulatto population thereof, and their colonization in Africa."

The increase of the free black population in Maryland between the years of 1840 and 1850 was eleven thousand one hundred and twenty-nine. From 1790 to 1850 the annual increase averaged one thousand and fifty-two. The counties of Cecil, Kent, Caroline, Worcester, Harford and Baltimore City, had more free negroes than slaves in 1850. The counties of Charles, St. Mary's, Calvert, Kent, Caroline and Worcester showed an increasing per cent of free negroes over the whites in the ten years between 1840 and 1850. The total white increase during the same decade for the whole State was 29.9 per cent. The free black increase was 17.9 per cent. Slaves had decreased.[65] The committee showed that at the given rate of progression, the free negro population must in a few years exceed the white population in eleven of the counties. The committee explained the cause of this increase by the emigration of the white population to the western states, while the free negro remained, knowing that when once he emigrated, the law forbade his return.

The Maryland State Colonization Society was incorporated by the state legislature in 1831.[66] The object of the society was to employ the funds collected in Maryland for the removal of the free negro population. From this time the plan of colonization in Africa was adopted as a state policy.

The act of 1831 ordered the governor and council to appoint a board of three managers, members of the Maryland Colonization Society, whose duty it should be to

[65] Committee's Report, Debates, vol. ii, p. 220.
[66] Act 1831, ch. 314.

have removed from Maryland all blacks then free who might be willing to leave. All those who might be freed subsequently to the act were to be removed whether willing or not."[87]

In 1834 the State Colonization Society purchased territory in Liberia, Africa, to the extent of one hundred and thirty miles on the Atlantic Coast, and to an indefinite extent into the interior. The seat of the government was Cape Palmas. For the removal of the free black population the treasurer of the State was authorized to contract loans to the amount of two hundred thousand dollars. Ten thousand dollars were placed annually upon the tax-list to pay the interest on the loans, and to provide for the payment of the principal. Between the years of 1831 and 1850 there were one thousand and eleven free negroes colonized in Africa from the State of Maryland, at a cost of two hundred and ninety-eight thousand dollars. Of this amount one hundred and eighty-four thousand five hundred and thirty-three dollars was paid by the State.

The committee reported the following to be placed in the constitution:

Sec. 1. "The General Assembly shall have power to pass laws for the government of the free colored population and for their removal from the State, and at its first session after the adoption of this constitution, shall provide by law for their registration."

Sec. 2. "No person of color shall be capable of purchasing or holding real estate within this State, by title acquired after the adoption of this constitution, . . . ."

Sec. 3. "No slave shall be emancipated or become free except upon condition that he or she leave this State within thirty days next after his or her right to freedom shall accrue."

Sec. 4. "No free person of color shall immigrate to, or come within this State to reside."[88]

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[87] Brackett, The Negro in Md., p. 165.
[88] Debates, vol. ii, p. 223.

The report of the committee on the free negro population was never considered by the convention; though there were several attempts made for its consideration. The question was considered when the twenty-first article of the Declaration of Rights was under discussion. This article declared: "That no freeman ought to be taken or imprisoned, or disseized of his freehold, liberty or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land."[69]

Mr. Brent, of Baltimore City, moved an amendment to the article by substituting the word "citizen" for "freeman."[70] Mr. Brent said that the object of the amendment was to provide for a contingency, which might arise, in which it would be necessary to banish the free negro population of the State. He considered that without his amendment the Declaration of Rights would prohibit the legislature from removing this class. Several members of the convention expressed their belief that the time was not far distant when the State would be compelled to take serious measures for the removal of the free colored population from its borders. Mr. Merrick, of Charles county, said that the time must come when a separation, peaceably or forcibly, must take place between the free blacks and the whites. No two distinct races could, or ever would, inhabit the same country, except in the relative condition of master and slave—of the ruler and the ruled. Sooner or later they must separate or the extermination of the one or the other must take place. The black race could not remain; they were multiplying too fast.[71]

Under the original constitution there was no difference in the character of citizenship between freemen of whatever color. In 1802 the political power of the State was vested in free white male citizens only.[72] Since that time

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[69] Compare Magna Charta, art. 39.
[70] Debates, vol. i, p. 194.
[71] Debates, vol. i, p. 197-198.
[72] Act 1802, ch. 20.

the free negro had no political rights whatever. Mr. Brent's amendment was rejected, and a provision was inserted in the Declaration of Rights, which permitted the legislature to pass laws for the government, and disposition of the free colored population.[73]

A petition was presented to the convention from a number of citizens of Frederick county, praying that an article be inserted in the constitution, compelling all free negroes, annually to give bond, with responsible security to the State, for their good behavior; in default of bond they were to be compelled to leave the commonwealth.[74]

Another question of interest that received the earnest consideration of the convention, but upon which no final decision was taken was the question of public education. Maryland at that time had no general system of public schools.[75] Each county and city maintained its own schools, except as to certain funds distributed by the State. These funds were derived from different sources. The first was called "The Free-School Fund." It was derived from the surplus revenue of the Federal Government distributed among the states.[76] The free-school fund amounted to nearly sixty-three thousand dollars in 1851.[77] This fund was distributed among the counties and Baltimore City as follows: one-half equally, and one-half according to the white population of each respectively.

The second fund was derived from certain taxes on banks.[78] It amounted to about twenty thousand dollars in 1851.[79] All fines collected from the violation of the laws

[73] Dec. of Rights, 1851, sec. 21. [74] Debates, vol. i, p. 371.

[75] See Steiner's History of Education in Md., p. 66.

[76] An act of the legislature 1836, ch. 220, sec. i, provided that of the money received, and to be received from the Federal Government, $274,451 should be set aside for the purpose of defraying the interest on the public debt already created. The residue was to be deposited with banks, with interest at 5 per cent or more; the interest accruing was to be distributed among the counties and Baltimore City for the support of common schools.

[77] Debates, vol. i, p. 431.

[78] Act 1821, ch. 113. [79] Debates, vol. i, p. 431.

against betting on elections; and all deposits of wagers on elections, were to be paid to the treasurer of the Western Shore for the benefit of the school fund,[80] the fines collected from persons violating the oyster laws were also appropriated to the same purpose.[81]

On the 25th of February, Mr. Smith, of Allegany county, chairman of the committee on education submitted a majority report. The report recommended to the legislature to establish a permanent and adequate school fund, so soon as the financial condition of the State should justify it. The fund was to be securely invested, and remain perpetually for educational purposes. The legislature was also to establish a uniform system of public schools throughout the State. The report also provided for the establishing of a State Normal School, and for the election of a state superintendent of public schools.[82] The consideration of the committee's report, after several attempts to have it taken up by the convention, was postponed indefinitely, and no final action was taken on the subject.

The question of public education was discussed in the convention when the report of the committee on the legislative department was considered. The original bill as reported by this committee provided that no loans should be made upon the credit of the State, except such as may be authorized by an act of the General Assembly passed at one session; and be confirmed at the next regular session of the General Assembly.[83] Mr. Constable, of Cecil county, moved an amendment to this article by inserting a provision which would authorize the legislature to impose taxes for the establishment of a uniform system of public schools throughout the State, adequately endowed to educate every white child within its limits.[84] This amendment was rejected. The extravagance of the legis-

[80] Act 1839, ch. 392, sec. 2.
[81] Act 1833, ch. 254, sec. 5.
[82] Debates, vol. i, p. 339.
[83] Debates, vol. i, p. 124; Committee's Report, sec. 21.
[84] Debates, vol. i, p. 395.

lature in granting state aid to works of internal improvement, created a general demand for restriction on the power of the General Assembly to make appropriations.

The convention adopted a provision which prohibited the legislature from appropriating public money, or pledging the State's credit for the use of individuals, associations, or corporations, "except for purposes of education." The last clause was an amendment introduced by Mr. Davis, of Montgomery county, an ardent advocate for a general system of public education. This amendment of Mr. Davis was adopted by the convention by a vote of 43 to 24;[86] but on the motion of Mr. Thomas, of Frederick county, was reconsidered and rejected by a vote of 39 to 31.[86]

The opposition to the establishing of a uniform system of public education within the State, came from Baltimore City and the larger counties. The cause of the opposition was due to the very unequal manner in which the existing school fund was distributed; and because many of the counties and Baltimore City had ample provisions for schools under their local systems. Several of the counties had their own funds specially devoted to educational purposes. There was a general feeling of disappointment in the convention at the failure to provide for a uniform system of public schools. One member advocated a poll-tax. No man, he said, would be so unworthy the name of an American citizen as to refuse the price of one day's labor, to maintain public schools.[87] It is noteworthy that the constitutional convention in 1864 provided for a uniform system of public schools along the line recommended by the committee on education in 1851.

Petitions were presented to the convention from citizens of thirteen counties, and from Baltimore City, praying that a provision might be made in the constitution which would prohibit the legislature from granting the privilege

[86] Debates, vol. i, p. 425.
[86] Debates, vol. i, p. 433.
[87] Debates, vol. ii, p. 808.

to sell intoxicating liquors to any person in any part of the State, except on the condition that his application to sell the same was approved by a majority of the voters in the district where the liquors were to be sold. The petitions were referred to a special committee; but no report was made. One member made the proposition that every member of the convention should join the temperance society.[88]

Mr. Hicks proposed an amendment which would make it unconstitutional for a member of that convention to accept any office or an appointment under the constitution until ten years after its adoption. This amendment was rejected by a vote of 39 to 32.[89]

The convention, after a session of more than six months, adjourned *sine die* on the 13th of May, at 1.30 A. M. The constitution was not adopted as a whole by the convention. That a majority of the members present at the final session would have voted for its adoption, is doubtful. The final adjournment took place rather unexpectedly. The reports from several committees had not been considered.

There was a general feeling of disappointment throughout the State with the convention, and a demand for its adjournment. The last scene was one of confusion and disorder. A gentleman, who was present at the final session, and whom the *Baltimore American* assures the readers was an authentic and responsible person, said that there were some things connected with the constitution of 1851 which properly belongs to its history, but which would never appear in the official proceedings as published. A few days before the adjournment it was announced by several of the leading and most influential men of the "reform party" that a final vote of acceptance on the constitution as a whole would be taken, when all the parts were completed and arranged. At this time there were some eighty or ninety members in attendance. It soon

[88] Debates, vol. ii, p. 605.

[89] Debates, vol. i, p. 205.

became evident that the known objections to certain provisions in the constitution would prevent its acceptance by the majority of the convention. Finding that the constitution would not be adopted as a whole, an order was passed that when each separate part of the document had been passed, the whole should be signed by the president and secretary. To further these purposes a day was set on which all must be finished; whether ready or not the convention must close. The committee on revision sat in the senate chamber, and as fast as a defect or omission was discovered, sent in one of their members to have it corrected by the convention. The last scene would have been amusing, had the occasion not been a grave one. At two in the morning the committee on revision, headed by its chairman, with an assembly partly excited and partly asleep, was presenting as the constitution a bunch of paper only fit to be offered at the counter of a rag merchant. Some asked for a needle and thread to stitch the constitution.

Our author concludes as follows: "If the law-loving and dignified men, who framed the constitution of 1776, were permitted to revisit the scenes of their former glory, they would have bowed their heads with shame at the degeneracy of their posterity."[80]

Frequently the convention was unable to transact business for want of a quorum. The *Baltimore Sun* in an editorial May 7, 1851, said that, "It is clear to every dispassionate observer that the people were either remiss in their selections of men as reformers; were governed in the matter by *party* rather than by *political* considerations, or were unprepared to appreciate the quality and character of a bold and searching reform. Instead of a convention of men acting under an exalted sense of great responsibility, we have seen on the part of many of them a constant display of factious opposition, originating in sectional interests, and party prejudice."

[80] Baltimore American, May 19, 1851.

## CHAPTER III

### THE CONSTITUTION

The constitution was submitted to the voters of the State, June 4, 1851, and was ratified by a majority of 10,409 votes.[1] The eight counties of the Eastern Shore gave a majority of 1337 for the new constitution. The counties of Anne Arundel, Charles, Calvert, Kent, Montgomery, Prince George's, Somerset and St. Mary's voted against its adoption.

The constitution pleased no one; but to many it was an improvement on the old one, "a thing of shreds and patches." Of the sixty articles of which the original constitution consisted, twenty-five had been abrogated and twenty had been so amended as to have retained little of their original form. Altogether there had been sixty-six amendments made.

Only twenty-two days intervened between the adjournment of the convention and the ratification of the constitution. During this time the friends and opponents of the new constitution kept constantly before the public its merits and defects.

It has been stated that the people of the State adopted the constitution of 1851 without a full knowledge of its provisions. This statement appears to be entirely unfounded. The text of the constitution was published in the daily and weekly presses of the State. It was also published in pamphlet form. Furthermore it was translated into German, and published in the daily *Deutsche Correspondent*, a paper having quite a reputation in its activity for promulgating the public documents and laws among the large number of Germans in the State.[2]

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[1] See Appendix, p. 86.

[2] Baltimore Sun, May 22, 1851.

Of the one hundred and three members of the convention, only fifty-five favored the adoption of the constitution.[5] The president of the body, himself, the Hon. John G. Chapman, a few moments before he declared the convention adjourned *sine die*, said, that he had witnessed with profound regret many of the features embodied in the constitution. That the salutary changes were so few and light when weighed in the balance against graver and more objectionable features, that he had no other alternative than to vote, at the ballot-box, against its ratification.[6]

While the constitution was before the people for their consideration, the general tone of public discussion in regard to the work was free from strict party spirit. Two of the leading Whig papers: the *Frederick Herald* and the *Hagerstown Torchlight* declared in favor of the new constitution. The Democratic papers generally throughout the State urged its adoption, as well as several of the neutral county presses. The *Cambridge Democrat*, the *Centerville Sentinel* and the *Easton Star* were also in favor of adopting the constitution. These papers, while not entirely satisfied with the instrument, considered it an improvement on the old one. Other papers, as the *Rockville Journal* and the *Port Tobacco Times*, urged the rejection of the constitution.[7] The *Baltimore American* was very strong in its opposition to the constitution, while the *Baltimore Sun* strongly urged its adoption.

While the discussion on the constitution was free from party spirit, it was not free from the appeals of the demagogues, who sought to array the poor and the rich in antagonistic positions.[8] The provisions of the constitution relating to the homestead exemption,[9] and to the abolishment of imprisonment for debt,[10] gave rise to these unjustifiable attacks.

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[5] Baltimore Sun, May 14, 1851.
[6] Debates, vol. ii, p. 890.
[7] Baltimore Sun, May 23, 1851.
[8] Baltimore American, June 2, 1851.
[9] See page 78.
[10] See page 78.

The chief objection to the new constitution was the change introduced in the organization of the judicial system of the State. The *Baltimore American* in an editorial of June 3, 1851, declared, that "there were many men in Maryland, who, if they approved of every feature in the constitution, save that which reorganized the judiciary, would vote against the constitution on account of that one insuperable objection."

Other objections to the adoption of the constitution were placed on less objectionable grounds. An attempt was made tc show that there would be a period of four months of anarchy in the State, if the instrument was adopted. During these four months civil wrongs would go unredressed; debts uncollected, and crimes unpunished.

The constitution, if adopted, was to go into effect July 4. No election was to be held until November the 5th. Until the latter date, the new offices created by the new measure could not be put in operation, while the offices which were to be abolished were to be discontinued from the day of its adoption. The county courts, and the Baltimore City court were abolished. No specific provisions were made for the continuation of the jurisdiction of these courts until their successors could be established. The court of chancery, which was also abolished, was to continue by a specific provision until two years after the adoption of the constitution.[9] Those who opposed the adoption maintained that the same provision did not apply to the former courts.[10]

The framers of the constitution intended that the eighth section of Article 10 should bridge over the transition period. This section provided that the governor and all civil and military officers then holding commissions should continue in office until they were superseded by their successors. Whether the adoption of the constitution would

[9] Constitution 1851, art. iv, sec. 22.
[10] Baltimore American, May 26, 1851.

or would not create an "interregnum" of four to six months in the administration of justice was a debatable question. The omission of a definite provision for the continuation of the courts until their successors could be established, shows the inability of the majority of the framers of the constitution to do the task assigned them.

A contributor to the *Baltimore American* from Cumberland, Md., states that he observed a group of citizens on the street discussing the constitution. "One said that it had cost the State $183,000, which, according to the best calculation he could make, was a little more than $1.50 per word, which, considering the quality of the goods, made it about the hardest bargain of modern times."[11]

Other motives than the merit of the constitution influenced many to vote for its adoption. Its rejection would have again placed the fundamental law of the State in the power of the General Assembly. Governor Lowe in his inaugural address, January 6, 1851, referring to the convention then in session said, "Even should no practical reforms result from the labors of the present convention, still I regard the value of the principle, now established, so great in view of the possible future, as to hold the expense, inconveniences, and even total failure of this first attempt, however deplorable, to be entirely of subordinate importance. While, therefore, the people yearn for the enjoyment of those salutary reforms, which right, justice, and good policy call for; and although they should possibly be doomed to meet with a total or partial disappointment of their reasonable hopes, they cannot forget to console themselves with the knowledge that the great battle, in fact was fought and won, when the legislature after a steady resistance of twenty years, finally promulged, and Maryland by an almost unanimous vote ratified the doctrine, that the people are not enchained by the fifty-ninth article of the constitution.[12] This is the entering wedge to the future. This is the key to the treas-

[11] Baltimore American, June 2, 1851. [12] See ch. i, p. 10.

ury of popular rights. With this weapon the people will be resistless, in all future struggles for the extension of their privileges." [13]

On the whole, the constitution of 1851 was rather a poor instrument, though there were some salutary reforms made. A comparative study of the constitution with the one it superseded reveals some radical changes.

In the Declaration of Rights there were but few changes made. The addition to the first article, which declared that the people had at all times, according to the mode prescribed in the constitution, the inalienable right to alter, or abolish their form of government in such manner as they may deem expedient, was a subject of much discussion during the reform agitation, and in the convention.[14]

The twenty-fourth article of the Declaration of Rights declared that no conviction should work corruption of blood, or forfeiture of estate. This was a modification of the original article, which permitted forfeiture of estate for murder, and treason against the State, on conviction and attainder.[15] A new article was inserted in the Declaration of Rights, which declared that the legislature ought to encourage the diffusion of knowledge and virtue, the promotion of literature, the arts, sciences, agriculture, commerce, and manufactures, and the general amelioration of the condition of the people.[16]

The thirty-fourth article of the Declaration of Rights is especially worthy of notice, as it permitted Jews and others to hold office, if they declared their belief in a future state of rewards and punishments. The constitution of 1776 required in addition to the oath of support and fidelity to the laws and constitution of the State, a declaration of a belief in the Christian Religion.[17]

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[13] Debates, vol. ii, p. 96.

[14] See ch. ii, p. 26.

[15] Dec. of Rights, 1776, art. 24.

[16] Compare Cal. Const. 1849, art. x, sec. 2.

[17] Dec. of Rights, 1776, art. 35. The latter clause was repealed in 1826, and Jews were given the same privileges as Christians. See Steiner's Citizenship and Suffrage in Md., p. 33.

The first article of the constitution relates to the elective franchise. Some salutary reforms were made in this with the view of obtaining the purity of the ballot-box. Illegal voting had been a great source of complaint from both political parties. The right of suffrage required a residence of twelve months in the State, and six in the city or county. The act of Congress requiring members of that body to be elected by single districts throughout the United States, made it necessary to divide the State into congressional districts. There was no fixed duration of residence required in passing from one district to another within the same county or city. This gave facility to the perpetration of frauds on the elective franchise under the system, known as "colonizing voters."

The first attempt to have a registration of voters was made in 1837. In that year a law was passed to provide for the registration of the voters in Baltimore City. This law was considered by many to be unconstitutional, because it imposed duties upon the citizens of Baltimore City, which were not common to other citizens of the State. An unsuccessful attempt was made in the convention of 1850 to provide for a general registration law in the State. It was not until 1865 that Maryland had such a law.[18]

The constitution of 1851 required six months' residence in the district, and twelve in the State, in order to exercise the right of suffrage. The right to vote was retained in one district, until the same right was acquired in another. The constitution also provided that a person guilty of receiving or giving bribes for the purpose of procuring votes, should be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter. The pardoning power of the governor did not extend to this offense. All officers before entering upon their duties were obliged to take an oath that they had not been guilty of bribery or fraud in any way.[19]

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[18] Steiner's Citizenship and Suffrage in Md., p. 47.
[19] Art. i, sec. 4.

The constitution of 1851 made only slight changes in the executive department of the State. Prior to 1836 the governor was elected by joint ballot of both Houses of the General Assembly. By an amendment to the constitution in that year, the governor was to be elected by popular vote. The term of office was for three years. The State was divided into three gubernatorial districts, from each of which the governor was to be chosen in rotation.

The constitution of 1851 adhered to the system of districting the State for the election of the governor. The counties of the Eastern Shore formed one district. St. Mary's, Charles, Calvert, Prince George's, Anne Arundel, Montgomery, and Howard counties, and Baltimore City formed a second district. Baltimore, Harford, Frederick, Washington, Allegany, and Carroll counties constituted the third district. The qualification for the office of governor was slightly changed. The requirements were a five years' residence in the State, and a three years' residence in the district from which he was elected.

The most important change in the executive department was the limitation on the governor's appointing power. Previous to the adoption of the constitution of 1851, the governor, with the consent of the Senate, appointed the chancellor, all judges and justices and all civil officers of the government (assessors, constables, and overseers of roads only excepted).[20] The governor also appointed the clerks of the several county courts; the clerks of the court of appeals, and of Baltimore City court. The register of the High Court of Chancery, and the registers of wills throughout the State were also appointed by the governor.[21] This extensive power of appointment, or the "executive patronage" as it was called, was thought to have an injurious influence upon popular elections, and a growing tendency to abuse. The constitution of 1851 provided for the election of nearly all of these officers by popular

[20] Constitution 1776, art. 48. [21] Act 1836, ch. 224, sec. 1.

vote. A new duty was imposed upon the governor, by making it obligatory on him to examine semi-annually the treasury accounts.[32]

In the legislative and judicial departments the changes made by the constitution were more radical and numerous. The term of office of state senator was reduced from six to four years. One-half of the Senate was to be elected biennially, instead of one-third as formerly. The six-year term was thought to be so long as to take away, in a measure, the responsibility of senators to the people, for their conduct. No change was made in the mode of electing, nor in the numbers of senators. Each county and Baltimore City was given one senator.[33] For the first time in the history of the State, representation in the House of Delegates was based on the aggregate population.[34] This principle extended only to the representation of the counties. Baltimore City was limited to four more delegates than the largest county. Baltimore county was the most populous county in the State. Its population in 1850, including free black and slaves, was 41,589. The population of Baltimore City was 169,012, a difference of 127,423.[35]

The duty imposed upon the legislature to appoint two commissioners to revise and codify the laws of the State deserves to be noticed. There had long been need of a proper codification. Several attempts had been made, but without success.

Another salutary change in the constitution was the provision that no bill should become a law unless it was passed in each House by a majority of the whole number of members elected, and unless, at its final passage, the ayes and noes were recorded.[36] Formerly a great number of laws were passed by the silent assent of many of the members of the legislature. No vote being recorded, the mem-

[32] Art. ii, sec. 17.
[33] Art. iii, sec. 2.
[34] See ch. i, p. 17.
[35] U. S. Census; Debates, vol. i, p. 287.
[36] Constitution 1851, art. iii, sec. 19.

bers of the General Assembly were enabled to escape from the responsibilty of injurious legislation.

The constitution of 1776 permitted the Senate to give only their assent or dissent to all money bills. This restriction was removed by the constitution of 1851.

In Maryland until 1841 divorces were granted by the legislature, and no court had power to grant them. By an Act of 1841, ch. 262, for the first time, jurisdiction over applications for divorce was conferred upon equity courts. But it was held that this did not divest the legislature of its power to grant divorces.[27] The constitution of 1851 gave the equity courts the exclusive power to grant divorces. This change was made on the ground that it consumed too much of the legislature's time, and because it is properly a judicial act. The legislature in 1849, it was said, granted twenty-one divorces, and that generally upon *ex-parte* testimony.[28]

The constitution of 1851 prohibited the legislature from contracting debts, unless authorized by a law providing for the collection of an annual tax sufficient to pay the interest of the debt contracted, and to discharge the debt within fifteen years. The amount of debt contracted should never exceed one hundred thousand dollars. The credit of the State was not to be given in aid of any individual, association, or corporation. The General Assembly was prohibited from involving the State in the construction of works of internal improvement, or making appropriations to works of like character.[29]

The office of attorney-general was abolished. Judge Chambers, of Kent county, one of the delegates to the convention of 1850, fourteen years later said that the reason for the abolition of this office was purely from personal considerations, having relation to an individual,

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[27] See Wright's Case, 2 Md. 429.
[28] Debates, vol. i, p. 247.
[29] Const. 1851, art. iii, sec. 22.

who, it was supposed was going to obtain the office.[30] The evidence for this assertion does not appear in the debates of the convention. The office was abolished by a vote of 45 to 14. Mr. Chambers himself voted for its abolishment.[31]

The office of attorney-general was created by the constitution of 1776. The attorney-general was appointed by the governor, with a tenure of office during good behavior. The duties of the attorney-general were left undefined. In 1816 the legislature abolished this office.[32] But in the succeeding session, a law was passed re-establishing the office, and defining its duties. In 1821 the duties of attorney-general were further defined. He was required to prosecute and defend on the part of the State all cases wherein the State was interested. He was required to give legal advice whenever the General Assembly, or the governor required it. He had also authority to appoint deputies in each county and in Baltimore City to aid him in the execution of his duties. Neither the attorney-general, nor his deputies received a fixed salary, but were paid for their services in fees. These fees were paid by the county or city where the services were rendered.

The objections to the continuation of this office arose from the manner in which the attorney-general was appointed, the tenure of office, and the extensive patronage in appointing his deputies.

The method of paying the attorney-general, and his deputies in fees was also objected to on the ground of affording greater remuneration than was necessary. It was estimated that the fees of the attorney-general amounted to $9000 per annum. In addition to this sum the State was paying on the average $1700 yearly to others than the attorney-general and his deputies, for legal

[30] Myers, The Md. Const. 1864, p. 72; J. H. U. Studies, vol. 19.
[31] Debates, vol. i, p. 549.
[32] Act 1816, ch. 247, confirmed by Act 1817, ch. 269.

services.[84] The great majority of the convention considered the office unnecessary, and desired its abolishment.

In place of the attorney-general the constitution of 1851 created the office of "State's Attorney." One state's attorney was to be elected by popular vote in each county and in the city of Baltimore. The duties of the state's attorneys were defined as being the same as that of attorney-general and his deputies, whom they superseded. The term of office was fixed at four years. The salary was to be paid in fees.[85]

The prohibition against imprisonment for debt was a progressive step, though at the time it called forth adverse criticism. The *Baltimore American* in an editorial of June 4, 1851, said that: "The abolishment of imprisonment for debt discharged not merely the innocent bankrupt, but the swindler and the whole family of knaves. It paralyzed the arm of the law, because its processes are of no other avail than to give notice to the debtor that he may escape with his means if he will. Its tendency is to destroy the credit of the poor man, because it offers a temptation to defraud those on whom his credit must depend." The clause abolishing imprisonment for debt was introduced in the convention by Mr. Presstman, of Baltimore City, and was passed by a vote of 60 to 5.[86]

The homestead exemption clause of the constitution was objected to on the ground of depreciating the value of the large capital invested in tenements.[87] The amount that could be exempted from execution for debt was five hundred dollars.[87]

The legislature was prohibited to authorize the issue of any lottery grants. The same restriction was placed upon the legislature by a constitutional amendment in 1839.[88] Until the expiration of the lottery grants in the State, one

[84] Debates, vol. i, p. 535.
[85] Const. 1851, art. v.
[86] Debates, vol. i, p. 448.
[87] Baltimore American, May 31, 1851.
[87] Const. 1851, art. iii, sec. 39.
[88] Act 1839, ch. 31. Confirmed, Act 1840, ch. 261.

commissioner of lotteries was to be elected by popular vote. After the first day of April, 1859, no lottery schemes could be operated, nor any lottery ticket sold within the State.[39]

A new feature in the constitution of 1851 was the provision for a general corporation law, and the prohibition against the chartering of a corporation by special act; except for municipal purposes, and in cases where, in the judgment of the legislature, the object of the corporation could not be attained under general laws.[40] The old system of chartering corporations by special act gave greater facility for corruption, and consumed much of the limited time of the legislature.

The liability clause of the constitution relative to banks, prohibited the legislature from granting thereafter any charter for banking purposes, or to renew any charter, except on the condition that the stockholders and directors of the bank should be liable to the amount of their respective shares of stock. A further restriction upon the chartering of banks was that no director or other officer of a bank should borrow any money from that particular bank.[41]

There was considerable opposition to this liability clause. It was claimed that the effect of the restrictions on the banks, and the double liability of the stockholders would seriously cripple the State's industrial activities.[42] The liability clause as originally introduced in the convention by Mr. Sollers, of Calvert county, made the stockholders and directors responsible in their individual capacities for the full amount of the bank's liabilities. Mr. Sollers also made it a penitentiary offence, and the forfeiture of a bank's charter forever, for the officers of a bank to have any dealings with the bank with which they were connected, except in the matter of salaries.[43]

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[39] Const. 1851, art. vii, sec. 5.
[40] Art. iii, sec. 47; Act 1852, ch. 23.
[41] Art. iii, sec. 45. [42] Baltimore American, May 17, 1851.
[43] Debates, vol. ii, p. 761.

The change in the judicial department was the cause of much opposition to the adoption of the constitution.[44] The jury was declared to be the judges of law as well as fact in the trial of all criminal cases.[45] All judges were to be elected by popular vote for a term of ten years. The salary of the judges of the court of appeals was fixed at twenty-five hundred dollars per year, and that of the circuit judges at two thousand. The State was divided into four, instead of six, judicial districts. The number of judges in each district was reduced from three to one.[46] The court of appeals was composed of four judges; one of whom was elected from each of the four judicial districts. The chief judge was to be designated by the governor. The court of appeals had appellate jurisdiction only, and its judgment was final in all cases.

In Baltimore City there was established a court of common pleas, which had civil jurisdiction in all suits where the debt or damage claimed did not exceed five hundred dollars; and was not less than one hundred dollars. This court had also jurisdiction in all cases of appeal from the judgment of justices of the peace in Baltimore City, and in all applications for the benefit of the insolvent laws of the State.[47] A superior court of Baltimore City was also established with jurisdiction over all suits where the debt or damage claimed exceeded five hundred dollars. Each of these courts consisted of one judge, elected by the voters of Baltimore City, for a term of ten years. The salary of the judges was twenty-five hundred dollars annually.[48] A criminal court of Baltimore City was also established, which exercised the jurisdiction heretofore exercised by the Baltimore City court.[49] In place of the county courts, the constitution of 1851 established circuit courts. For this purpose, the State was divided into eight judicial circuits. For each of these judicial circuits (except the fifth,

[44] Baltimore American, June 3, 1851.
[45] Art. iv, sec. 7.
[46] Art. iv, sec. 12.
[47] Art. iv, sec. 10.
[48] Art. x, sec. 5.
[49] Art. iv, sec. 13.

which included only Baltimore City, whose courts are described above), one judge was to be elected. The circuit judges were required to hold a term of court at least twice a year in each county.[30] The object in thus reorganizing the courts was to reduce the number of judges, and thereby decrease the cost of the judiciary. The qualifications for judges were: that, they must be learned in the law, having been admitted to practice in the State, and citizens of the State at least five years. They must be above the age of thirty years, and residents of the districts from which they were elected. A judge of the court of appeals was re-eligible until he attained the age of seventy years, and not after.[31] He was subject to removal for incompetency, wilful neglect of duty or misbehavior in office, on conviction in a court of law, or by the governor upon the address of two-thirds of the members of each House of the General Assembly.

The treasury department of the State was remodeled. The constitution provided for a comptroller of the treasury. This was a new officer designed to be a check upon the treasurer. The comptroller was to be elected by the people at each election of members of the House of Delegates (*i. e.* every two years). His salary was twenty-five hundred dollars per annum. The treasurer was to be elected on joint ballot, by the two Houses of the General Assembly at each session. The salary was the same as the comptroller received. The duties of the comptroller were: to have the general superintendence of the fiscal affairs of the State. He must grant all warrants for money to be paid out of the treasury, and make a report of the financial condition of the State's treasury within ten days after the commencement of each session of the legislature.[32]

The treasurer was required to render his account quarterly to the comptroller, and submit at all times to an in-

[30] Art. iv, sec. 8.
[31] Art. iv, sec. 4.
[32] Art. vi, sec. 2.

spection of the public funds in his hands. This plan of giving authority to the comptroller from one source; and to the treasurer from another, was to make them, in a measure, independent of each other, and thereby lessen the danger of collusion.

The constitution of 1851 provided for the establishment of an office of "Commissioners of Public Works." Such an office had been long deemed a necessity, but no provision had been made for its establishment. The control of the State over works of internal improvement had been exercised previously by a board of directors, appointed by the General Assembly. An act of the legislature in 1832 required the governor, with the consent of the council, to appoint three agents to represent the State at the meetings of the stockholders of all joint stock companies "incorporated to make roads and canals, and vote according to the interest of the State."[63]

In 1840 the number of the board of directors for the State was increased to five. The power of appointment was taken from the governor, and given to the General Assembly. The directors were required to keep a journal of the proceedings of the stockholders in their general meetings, and report the same to the legislature.[64] It will be noticed that these commissioners were appointed to represent the State as one of the stockholders, and to cast the vote of the State in proportion to the amount of stock held by the State.

The office of commissioners of public works as established by the constitution of 1851, consisted of four members, who were elected by popular vote for a term of four years. One of the commissioners was to be taken from each of the four districts into which the State was to be divided for that purpose. The first district included the counties of Allegany, Washington, Frederick, Carroll, Baltimore and Harford. The counties of Montgomery, How-

[63] Act 1832, ch. 318.

[64] Act 1840, ch. 155.

ard, Anne Arundel, Calvert, St. Mary's, Charles and Prince George's formed the second district. Baltimore City constituted the third district, and the eight counties of the Eastern Shore the fourth. A residence of five years in the district from which the commissioner was chosen was required to be eligible to this office. The commissioners' duties were, to have supervision over all public works in which the State was interested as stockholder or creditor.

The commissioners were also given authority to regulate the "tolls" so as to prevent injurious competition. In case of an equal division of opinion among the commissioners, the State's treasurer had the final decision.[85] It will be noticed that the districts were so arranged as to place the sections of the State with similar interest in the same district.

County commissioners were to be elected directly by the people. These officers were previously appointed by the governor. The election must be by a "general ticket," and not by district. The powers of the county commissioners were strictly limited by the legislature. Road supervisors were also to be elected by popular vote, as well as the county surveyors. The county of Worcester was required to elect a wreck master. Every commonwealth officer, with the exception of the governor, whose yearly income exceeded three thousand dollars was required to keep a record of all money he received, and to report the same to the treasurer annually. The excess over three thousand dollars was to be paid in to the state treasury. This provision was intended to prevent the enormous salaries received by some of the public officers in fees. It was said that the clerk of the Baltimore county court received fifteen thousand dollars annually in fees. Howard district, a part of Anne Arundel county, was erected into a county called Howard. A provision was also made for the erection of another county out of part of Allegany county.[86]

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[85] Art. vii.

[86] Art. viii, sec. 2.

The constitution of 1851 provided for its own amendment by a convention elected expressly for that purpose. The legislature was required at its first session immediately succeeding the returns of every census of the United States, to pass a law for ascertaining the wishes of the people of the State in regard to the call of a convention for the purpose of amending the constitution. This was not done until February 3, 1864.[87] The constitution went into effect July 4, 1851. It remained in force until 1864, and is remarkable for its extremely democratic features. All state officials from the governor to the constable were to be elected by popular vote. This provision was a reaction against the very conservative and aristocratic character of the constitution of 1776.

[87] Act 1864, ch. 5.

# APPENDIX

## Vote for the Call of the Convention of 1850.

| | FOR. | AGAINST. |
|---|---|---|
| Anne Arundel | 815 | 263 |
| Allegany | 1144 | 55 |
| Baltimore | 1682 | 144 |
| Baltimore City | 8069 | 376 |
| Cecil | 1342 | 365 |
| Caroline | 277 | 140 |
| Charles | 90 | 199 |
| Carroll | 695 | 154 |
| Calvert[88] | | |
| Dorchester | 251 | 399 |
| Frederick | 2793 | 155 |
| Harford | 881 | 149 |
| Kent | 323 | 234 |
| Montgomery | 426 | 186 |
| Prince George's | 162 | 325 |
| Queen Anne's | 489 | 328 |
| Somerset | 356 | 350 |
| Saint Mary's | 129 | 361 |
| Talbot | 393 | 279 |
| Washington | 2646 | 184 |
| Worcester | 460 | 279 |
| | 23423 | 4935 |

The official count declared a majority of 18,833 for the convention.

[88] Returns not given.

VOTE ON THE ADOPTION OF CONSTITUTION OF 1851.

| | FOR. | AGAINST. |
|---|---|---|
| Anne Arundel | 948 | 1113 |
| Allegany | 1333 | 703 |
| Baltimore | 2122 | 849 |
| Baltimore City | 9416 | 5830 |
| Cecil | 1378 | 638 |
| Caroline | 372 | 340 |
| Charles | 160 | 427 |
| Carroll | 1473 | 1094 |
| Calvert | 174 | 333 |
| Dorchester | 511 | 488 |
| Frederick | 3179 | 943 |
| Harford | 1135 | 875 |
| Kent | 384 | 443 |
| Montgomery | 569 | 717 |
| Prince George's | 207 | 656 |
| Queen Anne's | 627 | 517 |
| Somerset | 592 | 633 |
| St. Mary's | 165 | 533 |
| Talbot | 618 | 340 |
| Washington | 2913 | 688 |
| Worcester | 749 | 456 |
| | 29,025 | 18,616 |

Majority for constitution, 10,409.

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